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I. Scope Of This Report

This report addresses the second group of issues that fall within the seven-state workshop process addressing Qwest's compliance with the Section 271 Checklist of the Telecommunications Act of 1996. This report covers the issues assigned to "Workshop One" by the initial procedural orders, which are the first of a series of orders under which the workshop process has operated. This report addresses issues associated with the following checklist items:

Item 1: Interconnection

Item 1: Collocation

Item 11: Local Number Portability

Item 13: Reciprocal Compensation

Item 14: Resale

The Summary of Findings and Conclusions section of this report identifies the issues raised under each checklist item, including those resolved during the course of the workshops, those deferred to other workshops or proceedings for resolution, and those that remain in dispute. For those issues remaining in dispute, the summary section describes the recommended resolution of the disagreements. The later sections of this report provide more detailed discussions of the issues, particularly those that remain in dispute. The Summary of Findings and Conclusions and the detailed sections use the same numbering for these disputed issues.

II. General Background

The purpose of this report is to assist the seven state Commissions (Iowa, Idaho, Utah, New Mexico, North Dakota, Montana, and Wyoming) in reaching a decision as to what recommendations to make to the Federal Communications Commission (FCC) on the question of whether Qwest should be granted the authority to provide in-region interLATA services. To be eligible to provide in-region interLATA service, Qwest must meet the competitive checklist and other requirements of Section 271 of the Telecommunications Act of 1996 (the Act). A Qwest May 4, 2000 filing encouraged the several state commissions to consider a multi-state process to jointly review track A (competition issues), various aspects of the 14-point competitive checklist, Section 272 (separate subsidiary issues), and public interest considerations. Iowa, Idaho, Utah, North Dakota and Montana joined together (with Wyoming joining in September 2000 and New Mexico thereafter) in a multi-state collaborative proceeding, and issued procedural orders to govern the conduct of joint workshops. The joint workshops provide a common forum for all participants in all the states involved to present, for individual consideration by the seven commissions, all issues related to Qwest's Section 271 compliance.

Qwest filed written testimony for Workshop One on July 31, 2000. The Qwest witnesses and the items they addressed were:

Thomas R. Freeberg – Interconnection and Reciprocal Compensation

Lori A. Simpson - Resale

Margaret S. Bumgarner[1] - Collocation and Number Portability

On September 5, 2000, the following intervenors filed testimony: MCI WorldCom, Inc. (WCOM), McLeodUSA Telecommunications Services, Inc. (McLeodUSA), AT&T Communications of the Mountain States, Inc., AT&T Communications of the Midwest, Inc. and TCG affiliates (AT&T), Electric Lightwave, Inc. (ELI), NEXTLINK Utah, Inc. (NEXTLINK), Jato Communications, Inc. (Jato), Wyoming Consumer Advocate Staff (WCAS), Sprint Communications Company L.P. (Sprint), Net Wright LLC (NET WRIGHT), OPCOM Inc., Visionary Communications, Wyoming.com, and Contact Communications. Qwest filed the Rebuttal Testimony of the following witnesses on September 18, 2000:

Thomas R. Freeberg

Lori A. Simpson

Margaret S. Bumgarner

[1] Judith L. Brunsting and Marie E. Schwartz also filed testimony at the same time on Section 272 issues. Those issues will not be addressed until Workshop Session 7.

Net Wright filed rebuttal on that same date. On September 29, 2000, WCOM filed rebuttal testimony. In New Mexico, e.spire filed testimony on December 6, 2000;Qwest responded on January 3, 2001. During the first workshop, Rhythyms Links, Inc. introduced written testimony that was marked as Exhibit WS1-RYT-DHS-1.[2]

We have adopted a general rule that requires Qwest to file, before briefing of the issues, a copy of SGAT language related to those issues. This "frozen SGAT language" is intended to reflect language on which there is general agreement among the parties and language proposed by Qwest to address issues or language on which there is not general agreement. The purpose of this language is first to provide a reference base first for the participants' briefs and second for the commissions in reviewing this report. It is not intended to offer new language that has not before been seen or discussed in workshops, filings, or discussions among the parties.

Qwest filed the required language here on March 9, 2001.[3] The language is set forth as an appendix to this report.

Briefs were filed on April 10, 2001 by the following parties: Qwest, AT&T, XO/ELI, Sprint, Visionary and InTTec, and the Wyoming Consumer Advocate Staff. Qwest's timely filing of the frozen SGAT language has provided the participants a fair opportunity to brief any disagreements with any language that Qwest may have added or changed since its original and rebuttal filings on the issues addressed by this report.

This report assumes that the SGAT language filed by Qwest on March 9, 2001 will remain in effect, except as commission acceptance of any of the findings and conclusions of this report may require such language to change. Therefore, to the extent that any further changes in SGAT language are proposed (e.g., as a result of agreements reached in similar workshops in other states) they must be separately filed and supported, in order that the commissions may consider any issues associated with such proposed language changes. Absent individual commission approval of any such proposed changes, the language set forth in the appendix hereto shall be considered to be the final language for purposes of any state SGAT review or consultation with the FCC under Section 271.

[2] Transcript of October 5, 2000 at 667.

[3] Hereafter, the Frozen SGAT.

III. Summary of Findings and Conclusions

The following summary addresses the deferred and disputed issues and it provides a brief description of how each issue was resolved.

General Issues

There were arguments that a lack of Qwest facilities caused delays for CLECs in serving customers. Those issues should be addressed after the completion of OSS testing under the auspices of the Regional Oversight Committee. That testing will measure Qwest performance in meeting established standards that set intervals for providing service to CLECs. There were also arguments that Qwest's history of performance problems in serving CLECs requires a substantial forward-looking period of actual performance before concluding that those problems have been adequately solved. Those issue will also be addressed in OSS testing.

The participating states have made it clear that they will provide an opportunity to address such issues after the completion of OSS testing. Therefore, it is premature to decide them in the context of these workshops.

Checklist Item 1 – Interconnection

The parties raised and resolved prior to the briefs a total of 40 issues related to the Interconnection aspects of Checklist Item 1. Twelve issues remained to be resolved. Of these twelve issues, eight require SGAT language changes (issues 2, 3, 4, 6, 7, 8, 9, and 10 below), three require no change (issues 1, 5 and 11) and one issue is being resolved in the Reciprocal Compensation section of this report (issue 12). Qwest should not be deemed to be in compliance with this checklist item before it makes the changes necessary to deal with the eight issues. However, upon making those changes, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item. The twelve issues and the proposed resolutions are summarized below.

1. Indemnification For Failure to Meet Performance Standards

AT&T proposed an SGAT section that would hold CLECs harmless in the event that Qwest failed to meet the service quality standards of Section 7.1.1.1. AT&T characterized this language as an "incentive" for Qwest to perform. Qwest objected to this language on several grounds, including the fact that this provision would duplicate the Post-Entry Performance Plan. Because AT&T's proposal was not balanced and did not consider adequately the unique circumstances of a particular state's performance standards, it should not be adopted in the context of interconnection. Moreover, the upcoming workshop on general SGAT terms and conditions and the PEPP workshops provide more appropriate opportunities to address the broader aspects of AT&T's request.

2. Entrance Facilities as Interconnection Points

AT&T wanted to be able to use a portion of the entrance facilities it has already acquired under interstate tariffs to provide interLATA service to provide for interconnection to exchange local traffic. Such use raises several considerations: (a) should CLECs be able to use such facilities to gain access to UNEs, (b) should CLECs be able to combine local with other types of traffic on the same trunk groups, and (c) whether the portion of such trunk groups used to provide for the exchange of local traffic should be priced at TELRIC rates, rather than at the interstate tariff rate under which a CLEC initially secured the trunks. In similar workshops in Washington, Qwest agreed to modify the SGAT and permit access to UNEs; Qwest should change the SGAT here to reflect that commitment. The second two aspects of this issue have been resolved in the ***Reciprocal Compensation*** section of this report.

3. EICT Charges for Interconnection Through Collocation

AT&T recommended a change to the SGAT Section 7.1.2.2 to: (a) eliminate the requirement that CLECs pay for Interconnection Tie Pairs, and (b) remove EICT charge references from Section 7.3.1.2. Qwest has agreed to accept the resolution of this issue as proposed in the Draft Washington Order, which comports substantially with AT&T's request. This issue can be considered resolved if the same SGAT change is made here.

4. Mid-Span Meet POIs

AT&T objected to the requirement that mid-span meet POIs be required to be within Qwest wire center boundaries and sought the right to interconnect in this fashion at any technically feasible point. AT&T also objected to precluding the use of mid-span meet points to gain access to unbundled network elements. Qwest agreed to allow this form of interconnection to be used for access to UNEs, provided that the CLEC pay the UNE rate for the entire facility. CLECs should be permitted to pay TELRIC rates for the portion of the facility used to secure access to UNEs, under a rule that apportions costs first by assigning to UNE access the portion of the facilities that would be required for interconnection in the absence of concurrent use for interconnection. The rule would also allow relief to Qwest if the provision were misused to secure the installation of new facilities for UNE access. The current Utah Public Service Commission Rule 746-348-3(B)(1) mandates that each party be responsible for the costs of constructing its facilities to the meetpoint, and neither party may install a meetpoint that will require the other party to incur significantly greater construction costs to build to the meetpoint than the other party.

5. Routing of Qwest One-Way Trunks

Where a CLEC chooses one-way trunks, Qwest must install its own one-way trunks to terminate its traffic to that interconnecting CLEC. AT&T wanted CLEC, rather than Qwest, control over the routing of Qwest's one-way trunks back to a CLEC, in order to prevent Qwest from penalizing (through routings that unnecessarily consume CLEC facilities) a CLEC for choosing one-way trunks. AT&T's request would deny Qwest control over its own network configuration and costs. Concerns about Qwest's retaliation are better solved directly (which can be addressed in the upcoming general SGAT terms and conditions workshop) rather than by giving CLECs control over Qwest network decisions and costs.

6. Direct Trunked Transport in Excess of 50 Miles in Length

Qwest proposed a new SGAT section limiting its obligation to provide direct trunk transport to 50 miles in length. AT&T argued against this SGAT section as denying it the right to choose interconnection points. Qwest did not provide evidence to support a conclusion that it would not be able to recover the costs of longer trunks and it did not at all address the question of whether distance-sensitive pricing would provide a less draconian means of avoiding its risks of cost recovery. While Qwest should be free to address such issues in a cost docket, it failed here to justify the mileage limit. This SGAT provision should be eliminated. However, under circumstances where parties cannot reach an agreement, the issue is to be brought before the state commission to be decided upon on an individual case basis.

7. Multi-Frequency Trunking

AT&T sought such trunking where there is SS7 capability, but where it cannot be provided over multiple routes. Qwest argued that it does not provide such redundant capability for itself when it must rely on that single link routing and that the FCC has not ever addressed the issue. However, the record shows that: (a) the operational consequences are greater for CLECs who must depend on a single route and (b) sophisticated customers may make carrier-selection decisions on the basis of the differences in those consequences. Therefore, the SGAT should be changed to add MF trunking if the Qwest central office does not have SS7 diverse routing.

8. Obligation to Build To Forecast Levels

The dispute was over which forecast should serve as the measure of Qwest's obligation to provide interconnection trunks where Qwest forecast of a CLEC's needs was lower than the CLEC's own forecast. Qwest agreed that it would use a CLEC's forecast, but wanted a deposit before doing so, in order not to be at risk of recovery of its installation costs, should CLEC actual needs prove to be lower than the forecast at issue. Qwest's basis for requiring and refunding deposits was a target of 50 percent of forecasted usage. Commission Rule R746-365-6 Joint Planning and Forecasting outlines the appropriate forecasting requirements for interconnection. [4]

9. Interconnection at Qwest Access Tandem Switches

CLECs considered Qwest's refusal to allow interconnection only at local tandem or end office switches to be impermissible. After an administrative law judge considering the Section 271 checklist in Washington ordered Qwest to allow interconnection at access tandems, Qwest

[4] In the 271 Workshops it was decided that the 50 percent level was appropriate, but it should be based on usage of installed trunks not forecasted trunks. Moreover, Qwest's proposal did not oblige it to return deposits if parties other than the CLEC that provided a deposit make use of the facilities. According to the Workshop's recommendation, Qwest's deposit language should be accepted, but only after: (a) changing the measurement base for utilization and (b) making deposit refunds contingent upon use by any party, not solely the party that provided the deposit.

agreed here to allow it in accord with the Washington order. However, that order allowed Qwest two overly broad exceptions to the requirement. The exception allowed Qwest to require interconnection at local tandems or end office switches when: (a) traffic volumes reached specified levels or (b) Qwest agreed not to charge a CLEC more than it would cost to interconnect at access tandems. These exceptions require narrowing to make them more consistent with FCC requirements.

Therefore, the SGAT should be changed to allow interconnection at access tandems and the exceptions allowed in Washington should be narrowed as set forth later in this report. The SGAT should also be amended to limit Qwest's exemption from providing transport between local and access tandems and between access tandems to cases where there is a substantial risk of tandem exhaust and to cases where Qwest itself does not use inter-tandem connections to transport the calls of its own end users.

10. Inclusion of IP Telephony as Switched Access in the SGAT

AT&T objected to the inclusion of IP Telephony in the "switched access" definition language in the SGAT, arguing that the FCC has specifically exempted such traffic from access charges. Qwest has removed the disputed portions of the SGAT directly addressing IP telephony. Several other SGAT sections disputed by AT&T concern Internet-bound traffic generally; those disputes are addressed in the ***Reciprocal Compensation*** section of this report.

11. Charges for Providing Billing Records

SGAT Sections 7.5.4 and 7.6.3 allow Qwest to charge CLECs for providing billing records. WCOM objected to the Qwest charges for providing these records, because each party must provide these records to the other and neither has charged the other for providing these records in the past. The charges in question apply equally to Qwest and CLECs and they are for services intended to enable the other to secure revenues from end users. Charges are appropriate and there is not a basis for questioning the SGAT provision requiring payment of them.

12. Combining Traffic Types on the Same Trunk Group

Sprint objected to the separate trunk group requirements of SGAT Section 7.2.2.9.3.2, which it contended would require inefficient overlay networks to mirror "old" incumbent networks. Sprint expressed particular concern about the refusal to permit CLECs to take advantage of capacity on existing long-distance networks to carry local/EAS traffic. This issue is resolved in the *Commingling of InterLATA and Local Traffic on the Same Trunk Groups* issue in the ***Reciprocal Compensation*** portion of this report.

Checklist Item 1 – Collocation

For the Collocation portion of Checklist Item 1, the parties were able to resolve 54 issues before the briefs were filed. Four issues should be addressed in other contexts. First, an issue regarding the inclusion of collocation costs incurred in prices for interconnection is addressed in the ***Reciprocal Compensation*** section of this report, under the issue heading of *Including*

Collocation Costs in Reciprocal Compensation. Second, a NEXTLINK argument that Utah collocation charges are excessive should be considered in Utah-specific cost proceedings. Third, a NEXTLINK issue about collocation delays was addressed in the ***Common Issues*** section of this report, under the issue heading of *Lack of Available Facilities*. Fourth, Qwest appeared willing to respond to a Rhythms issue about APOTS-CFA information, but it is not clear that the necessary language has been added to the SGAT. This issue can be revisited in the upcoming general SGAT terms and conditions workshop, should added language continue to be needed.

Fifteen issues remained to be resolved under the Collocation topic. Of these fifteen issues, seven require SGAT language changes (issues 1, 3, 5, 6, 10, 11 and 14 below), and five require no change (issues 2, 4, 7, 9 and 13). Issue 11 requires Qwest to demonstrate during the 10-day comment period that the SGAT will not preclude ordering collocation prior to SGAT execution. Finally, issue 15, involving maximum order numbers, invites the participants to propose SGAT language during the comment period. Qwest should not be deemed to be in compliance with this checklist item before it makes the changes necessary to deal with the seven issues. However, upon making those changes, and upon Commission resolution of issues 11 and 15, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to the item. The fifteen issues and the proposed resolutions are summarized below.

1. "Product" Approach to Collocation

This issue has two distinct aspects:

> Whether it was reasonable for Qwest to require application of the BFR process before making new forms of collocation (i.e., those not detailed in the SGAT) available
>
> How to address inconsistency between SGAT provisions and underlying technical and administrative documents that provide equipment specifications, administrative or procedural requirements for ordering, and the like.

AT&T objected to the BFR process, which it considered cumbersome, but failed to offer a suitable alternative. The fact that Qwest agreed to make new collocation "products" available as it developed them began to address the issue of minimizing delay in availability. However, the SGAT should be changed to assure that new products still awaiting the process of negotiation with CLECs and possible state commission resolution of disputes would be offered under terms and conditions consistent with existing SGAT provisions where possible. The SGAT also should be changed to assure that the early agreement of a CLEC to Qwest proposed offerings does not preclude a CLEC from gaining the benefit of changes that a state commission later orders.

Resolving the consistency issue in a fashion that is practical requires a recognition that it is not realistic to think that there can ever be perfect consistency between numerous and complex underlying technical and administrative documents and the SGAT. The upcoming workshop on general SGAT terms and conditions should explore ways to establish a clear hierarchy of authorities in cases where they conflict. Pending that consideration, there has been no evidence to support a conclusion that discrepancies or disagreements in documentation are so profound as

to suggest that a determination of Section 271 compliance must await the rationalization of any documents that provide contradictory requirements or guidance on matters of central importance.

2. Adjacent Collocation Availability

McLeodUSA argued that the adjacent collocation option should not be limited to situations where space has been exhausted. However, McLeodUSA did not provide any support for this argument and in the absence of any showing at all of the need for requiring adjacent collocation where space is available, there should be no requirement to include such availability in the SGAT.

3. Precluding Virtual Collocation at Remote and Adjacent Premises

AT&T objected to virtual collocation restrictions in the SGAT and argued that virtual collocation may be necessary in remote locations where space limitations preclude physical collocation. Qwest countered that if there is no room for physical collocation absent a separation of its equipment, then there cannot be "by definition" any space for virtual collocation. Qwest's evidence did not establish any such level of certainty; therefore, there is no basis for precluding virtual collocation. Qwest should change its SGAT in order to assure that virtual collocation in remote locations is not precluded or conditioned to any greater extent in remote premises than it is at wire centers. This resolution will preclude virtual collocation where it is not possible.

4. Cross Connections at Multi-Tenant Environments

AT&T argued that SGAT Section 8.1.1.8.1 placed inappropriate restrictions on access to the Network Interface Device (NID) in multi-tenant locations (MTEs). Qwest's brief noted that it considered the issue to be resolved on the basis of its agreement not to require collocation "in MTE terminals located in or attached to customer-owned buildings where no electronic equipment, power or heat dissipation is required." Qwest's proposal provides a sound solution to the general question of the non-application of collocation requirements to MTE terminals.

5. Listing of Space-Exhausted Facilities

Qwest objected to having to inventory space at its wire centers as part of efforts to keep current its required web site for reporting space availability information to CLECs. Qwest wanted only to have to report information that it learned from CLEC requests associated with collocation. AT&T agreed to allow Qwest to limit its efforts to these sources for all premises other than wire centers. However, AT&T believed that the FCC required Qwest at least to have to independently maintain the current status of space availability at wire centers. The FCC requirements clearly contemplate a Qwest obligation to report within 10 days the filling of space at "premises." Qwest cannot report within 10 days unless it is obliged to maintain current knowledge of such status.

The FCC generally uses the term "premises" to mean much more than wire centers when collocation is the issue. However, it is reasonable to construe the term as meaning wire centers in this context, lest Qwest be put under a burden that grossly outweighs the benefits that will come from undertaking it. Therefore, Qwest should add SGAT language requiring it to report on wire center space, whether or not CLECs have inquired about collocation or collocation space there.

6. ICB Pricing for Adjacent and Remote Collocation

Qwest proposed that adjacent and remote collocation be priced on an individual case basis under the SGAT. AT&T argued that Qwest should be required to develop a standard list of adjacent and remote collocation offerings, which should, where possible, incorporate rate elements. The evidence here does not support the identification of any collocation offerings for which standard prices can be established, let alone what those prices should be. However, it may be that such offerings and their costs can at some point be identified sufficiently to support fixed pricing elements. Therefore, the SGAT should leave open the possibility for the development of standard prices, but it should not be criticized, in terms of Section 271 compliance, for failing to do so at present.

7. Conversion of Collocation Type – Payment of Costs

Jato asked for the elimination of ICB pricing for conversions among collocation types and it specifically objected to having to pay for the elimination of SPOT frames, which it said constituted an inefficient and anticompetitive Qwest policy in the first place. Qwest objected to eliminating provisions for recovering its costs. There is not a record basis for concluding that the circumstances involved in converting among collocations will be so similar as to support standard pricing. Moreover, Jato provided no evidence to support its claim about SPOT frames. Therefore, neither of its pricing recommendation should be adopted.

8. Recovery of Qwest Training Costs

For virtually collocated equipment, WCOM argued that CLECs should be able to provide the training themselves or contract with Qwest for it at "reduced rates." Qwest responded by saying that it is proper for Qwest to recover the cost of training related to equipment that a CLEC collocates and that may be unfamiliar to Qwest personnel. Because Qwest must maintain and repair virtually collocated equipment, it should have the ability to identify and provide the training reasonably required to perform those duties. Moreover, as Qwest's recovery of training costs is limited to what is reasonable, what WCOM meant by arguing for reduced rates is not clear.

9. Removal of Equipment Causing Safety Hazards

SGAT Section 8.2.3.10 allows Qwest to remove or correct non-compliant equipment problems at CLEC expense, provided that it has given the CLEC a 15-day notice of Qwest's determination that such problems exist. Jato, McLeodUSA, AT&T all commented on this provision. Qwest did agree to change the section to meet many of the concerns. The CLEC-proposed conditions beyond those that Qwest has agreed to incorporate are not appropriate for inclusion in the SGAT.

10. Channel Regeneration Charges

Depending upon where a CLEC collocates, channel regeneration may be required for it to operate effectively. Distance is the important criterion. CLECS generally objected to paying for channel regeneration. Qwest agreed that CLECs should pay for regeneration where it is unavoidable, but the SGAT did not limit charges to such situations." Therefore, the SGAT

should be changed to remove the power to charge where there exists another available collocation location where regeneration would not be required, or where there would have been such a location, had Qwest not reserved space for its future use in the affected premises.

11. Qwest Training Costs for Virtually Collocated Equipment

Qwest must install and maintain virtually collocated equipment; therefore, it should recover its costs for training associated with that equipment, which it may not use for its own purposes. The SGAT provided for the prorating of Qwest training charge if a second CLEC began to use the same equipment type, but did not provide for continued proration for use by additional CLECs. The SGAT should allow for continued proration, but it should not be changed to make the training charges for each CLEC, as McLeodUSA suggested, depend upon the relative number of pieces of equipment used by that CLEC.

12. Requiring SGAT Execution Before Collocation May Be Ordered

It is not clear whether the SGAT requires a CLEC to execute it before it may begin the process of collocation ordering. While it is appropriate for Qwest to get basic information about the CLEC and to secure financial protection, it is not appropriate to delay collocation ordering pending SGAT execution. The reason is that the ordering times for collocation are long. CLECs could face significant delays if they must first choose among the SGAT, opting into another interconnection agreement, or negotiating a separate interconnection agreement. Therefore, Qwest should demonstrate that the SGAT will allow collocation ordering before SGAT execution, provided that Qwest has the same financial protections that would exist had the SGAT been executed.

13. Forfeiture of Collocation Space Reservation Fees

AT&T objected to the SGAT provision that would require CLECs to forfeit the nonrecurring collocation space reservation fee upon cancellation of the reservation. Qwest responded partially by reducing the costs of forfeiture and by adding a new SGAT provision that would provide a lower cost way to provide some of the benefits of space reservation. The Qwest proposal is supported by both the recovery of actual costs and the prevention of wasteful or inappropriate use of space reservation.

14. Collocation Intervals

Qwest argued that a waiver it had secured from the FCC justified an extension of the normal collocation intervals required by the FCC. AT&T responded that the FCC allowed for state consideration of shorter intervals and that it also had underscored the importance of keeping extensions of the intervals to a minimum in all cases. The major dispute focused upon what impact to a collocation interval should result if the collocation was not forecasted by the CLEC involved. AT&T's approach of tying interval extensions to space, power, and HVAC needs establishes a better connection between need for and interval extension and its granting and length. It addresses three of the principal reasons why Qwest might need added provisioning time, and its inclusion of another reason, basic infrastructure modifications, allows for consideration of other reasons. The SGAT should reflect the AT&T approach, rather than

Qwest's more liberal approach, which more loosely connects the causes and effects of interval affecting circumstances.

However, because forecasts do not commit CLECs to an order, Qwest is at financial risk in proceeding on the work it takes to accommodate them. The current Commission Rule R746-365-4(B)(c) outlines the applicable provisioning intervals. However, Qwest may request interval relief from the state commission.

15. Maximum Order Numbers

Qwest had proposed to limit it obligation to meet collocation intervals to five orders per state. The FCC allows limits, but focuses not strictly on the number of orders, but their complexity. Qwest defended the SGAT section imposing the limit, but deleted it from the SGAT filing. Qwest said that a substitute provision was included in another SGAT section, which was not included in Qwest's frozen SGAT filing. The five orders per state limit is not an appropriate way to measure the need for relief form interval requirements. The participants should present and defend proposed SGAT language in their 10-day responses to this report, which responses will be filed with each participating commission.

Checklist Item 11 – Local Number Portability

For Checklist Item 11: Local Number Portability, a total of 11 issues were resolved by the parties prior to the briefs, leaving only one issue at impasse. This issue does require an SGAT language change. Qwest should not be deemed to be in compliance with this checklist item before it makes the changes necessary to deal with this issue. However, upon making the changes, Qwest can be deemed to have met its burden of proof, subject to the completion and commission consideration of the results of any OSS testing that may relate to this item.

1. Coordinating LNP and Loop Cutovers

When a customer selects a CLEC as its carrier (and wishes to retain the same phone number) and the CLEC provisions its own loop, if the CLEC fails to have the customer transfer work done by the hour set by Qwest for a disconnect, the customer will suffer a loss of service. AT&T argued that exposing customers to unnecessary service disruptions creates a barrier to competition. It proposed to solve the problem in various ways; e.g., requiring Qwest not to disconnect until after confirmation of a successful disconnect, or performing automated queries to verify number porting before disconnecting. Qwest argued that none of the reasons for the CLECs failure to get the work done in time were within its control and thus it should not have to bear the burdens of special manual efforts. The evidence did not support a finding that Qwest can provide the coordination that AT&T wants through simple, inexpensive changes in its service-order system or automated querying. However, it is reasonable to expect Qwest to halt the disconnect at 11:59 p.m.if it receives notice from the CLEC on the same day by 8:00 p.m. Qwest should also commit to a study of the feasibility and costs of instituting automated means to provide the level of coordination that AT&T seeks.

Checklist Item 13 – Reciprocal Compensation

For Reciprocal Compensation, Checklist Item 13, the parties agreed not to have witnesses at the workshop but rather to introduce the transcripts from the Washington and Colorado workshops. Most of the reciprocal compensation issues were resolved outside of this workshop, although two of the resolved issues are discussed in this report. Five issues remained to be resolved. The following is a summary of the remaining unresolved issues and a discussion of their resolution:

1. Excluding ISP Traffic from Reciprocal Compensation

After the briefs were filed in this case, the FCC issued an order that held that Section 251(g) serves to exclude Internet service provider traffic from the reciprocal compensation provisions of Section 251(c). The treatment of ISP traffic as a condition for approval of checklist 13 requirements is inappropriate. However, the FCC's decision does not eliminate the need to review SGAT language to identify those sections that may still have continuing effect after the FCC's decision. The parties were asked to provide as part of their 10-day comments proposals for changing all those sections of the SGAT affected by the April 27, 2001 FCC order.

2. Qwest's Host-Remote Transport Charge

AT&T argued that reciprocal compensation is not due to Qwest for transport between its host switch and a Qwest remote office. Qwest countered that the connection between its host and remote switches is not part of the loop because in the event of calls outside the local area, Qwest must transport such calls along dedicated paths between host and remote switches. Qwest was concerned that the CLECs would secure the use of the umbilical (between the hose and the remote) for free. It is proper for Qwest to include the costs of the umbilicals in transport prices, assuming that it can demonstrate in any later cost proceeding that the underlying costs are not already captured at other places.

3. Commingling of InterLATA and Local Traffic on the Same Trunk Groups

AT&T and WCOM proposed an SGAT language change to allow CLECs to use spare special access circuits in trunks they have secured under interstate tariffs and to pay TELRIC prices for these circuits, rather than to continue to pay the rates called for in the federal tariffs under which CLECs have secured them. The language would permit such price "ratcheting" and allow the commingling of InterLATA and local traffic on the same trunk groups. Qwest argued that the FCC had considered and specifically rejected the configuration sought by the CLECs. While the proposed commingling and ratcheting would result in more efficient CLEC network use, this must be balanced against the FCC's and state commissions' goal of universal service. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. Accordingly, the AT&T's and WCOM's proposed language should not be adopted at this time. Qwest's proposed language, which would permit the use of spare access circuits for interconnection with the requirement that all circuits used are to be priced at special access rates, should be adopted.

4. Exchange Service Definition

AT&T proposed to alter the definition of "Exchange Service" to remove the words "as defined by Qwest's then-current EAS/local serving areas" in Section 4.22.[5] AT&T contended that the Commissions determine the boundaries of the local calling areas and that permitting Qwest to unilaterally modify this definition is inappropriate. In order to make it clear to all parties that the commissions will continue to define the boundaries of EAS/local service area boundaries, it is appropriate that Qwest should delete the phrase.

5. Including Collocation Costs in Reciprocal Compensation

AT&T argued that CLECs should be compensated for collocation costs where Qwest traffic traverses CLEC equipment collocated at the Qwest central office. In general, AT&T maintained that several aspects of Qwest's interconnection requirements, e.g., its SPOP proposal, its 50-mile trunk limit, and its restrictions on interconnection at tandems, served improperly to increase AT&T's reciprocal compensation obligations. XO Utah made similar claims. The AT&T and XO Utah argument violates the notion that transport and termination prices should be based on Qwest's costs, except where CLECs, which they have not done here, present studies showing that their own costs are different.

Checklist Item 14 – Resale

In Checklist Item 14: Resale a total of 29 issues were resolved before the parties filed briefs, leaving only three issues at impasse.

1. Indemnification

The argument here centered around AT&T's request for an indemnity provision that would provide for parity of treatment between Qwest retail customers and those served by CLECs who resell Qwest retail services. AT&T proposed SGAT language; Qwest countered with SGAT language that assumed limited liability. The form of "parity" being sought by AT&T is inapt; parity should be between the Qwest's retail customers and the wholesale customer (the CLEC itself, not the CLEC's customer). Therefore, the SGAT should include Qwest's language for Section 6.2.3.1, except that subsections (c), (d), and (f) thereof should be eliminated.

2. Marketing During Misdirected Calls

AT&T requested SGAT language that would limit Qwest's ability to market to CLEC customers who mistakenly contacted Qwest with a billing or repair problem. Qwest responded that such a prohibition limits commercial free speech and should not be allowed. The limitation is appropriate in the context of a commercial relationship in which Qwest serves CLECs. Qwest is

[5] AT&T's brief at 58.

not prohibited from discussing its products and services to any customer who asks, merely those who have contacted Qwest by error. Therefore, the language that AT&T proposes is generally appropriate for inclusion in the SGAT.

3. Special Contract Termination Charges

InTTec and McLeodUSA both raised a concern about termination penalties that Qwest could waive for its own customers who upgrade service but they were not able to waive for their customers. Both asked that Qwest be required to provide relief of termination cost liability and waive termination charges for CLECs as resellers. This remedy is too broad; it would prohibit Qwest from imposing charges even where it applies them to its own end users. However, it is appropriate for the SGAT to require Qwest to waive termination charges to the same extent that it does for its own customers.

4. Electronic Interface for Centrex Resale

A concern was raised about the lack of electronic OSS interfaces for Centrex resale. The testimony addressed efforts in Iowa related to this issue. The parties failed to provide the promised follow-up on the Iowa situation or to address a number of questions pertinent to the resolution of this issue. The issue cannot be resolved without further input from the participants.

5. Inaccurate Billing of Resellers

Essen raised concerns about billing accuracy; these issues are better deferred until the completion of ROC OSS testing.

6. Ordering and Other OSS Issues

Essen raised general concerns, but did not provide the specific information needed to respond to this issue. If the issue remains of concern, it can be addressed subsequent to the completion of ROC OSS testing.

7. Other Pricing Issues

Essen raised concerns about the Montana wholesale discount and nonrecurring charges. The record here does not contain any substantial evidence about the costs underlying these pricing elements. They can only be addressed in later proceedings that focus upon costs.

8. Qwest Centrex Contracts

Essen raised concerns about Qwest's use of long-term contracts and the application of termination charges under them. There is no evidence of record to support a conclusion that such contracts or charges are inappropriate, or that Qwest has used them to disadvantage competitors.

9. Merger Related PIC Changes

Essen stated that the Qwest request for resellers to move all of their accounts from one PIC code to another during the Qwest/US West merger demonstrated how Qwest interferes with the ability

of CLECs to operate efficiently. The evidence showed this to be a one-time problem, for which Qwest compensated CLECs for the efforts required to accommodate Qwest system limitations.

10. Breach of Confidentiality Agreements

Essen cited several instances of billing problems in the past. Qwest presented evidence of efforts to address them. There was no evidence presented to show that the corrections have been ineffective.

11. Superior Service to Qwest's Internal Sales Force

Essen complained that short-term promotions were not being offered to CLECs at a discount. There was no evidence that Qwest failed to conform to the applicable requirements for availability of and application of discounts during short- and long-term promotions.

IV. Common Issues

Several parties raised issues that addressed a number of the checklist items within the scope of this report.

1. Lack of Available Facilities

NEXTLINK testified that it has often experienced collocation delays because of a lack of facilities, particularly access to DC power. NEXTLINK said that it has had to pay for other collocation facilities while it awaits power augmentation.[6] The Wyoming Consumer Advocacy Staff (WCAS) conducted a survey of in-state CLECs and it offered the results of that survey into evidence. The survey indicated a CLEC concern about lack of facilities and a fear that Qwest would favor its own end-users in responding to CLEC requests for service.[7]

Proposed Issue Resolution: The issue of delays in service, for whatever reason, are addressed in the performance measures that are set forth in the *Service Performance Indicator Definitions (*PID), which has been developed as part of a collaborative effort involving the state commissions that form the Regional Oversight Committee, Qwest, and the CLEC community. For measures in which the PID performance standard is established as parity with retail operations, then the lack of facilities is an issue that affects Qwest and CLECs equally, presuming that Qwest meets the performance standard. Where Qwest does not meet that standard, or a benchmark standard if that is what the relevant performance measure provides, the issue of financial consequence is being addressed in the PEPP. Performance of OSS testing by the ROC and the results of current workshops addressing the PEPP are proceeding in parallel with these workshops. The issue of delays should be addressed when those efforts reach or at least near completion. At that time, it will be more practical to address the extent to which facility delay may impose discriminatory burdens on CLECs.

2. The Need for A "Real World" Test of Qwest's Performance

Based in significant part upon the results of its survey of CLECs in Wyoming, WCAS argues that Qwest cannot be deemed to have met the 271 checklist requirements absent some period of operation henceforth, during which tangible evidence of its commitments to open its local market will accumulate.

Proposed Issue Resolution: There is no firm requirement that such a test period take place prior to a checklist compliance determination. Rather, the FCC appears to have recognized, through its reliance upon OSS tests and post-entry assurance plans, that there are other means of providing the assurances that are a pre-condition to RBOC entry into in-region long distance markets.

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[6] Response Testimony of David LaFrance on Behalf of NEXTLINK Utah, Inc., September 5, 2000 (hereafter LaFrance Direct), at page 12.

[7] Exhibit WS1-Wyoming CAS-1 (Walker Direct) at page 5.

There has not been substantial evidence to support the notion that Qwest's performance is so profoundly inadequate as to make these means inappropriate here. In fact, despite repeated efforts to induce CLECs to bring evidence about the nature of their relationship with Qwest to the workshops, not much information in that regard has been forthcoming.

Where CLECs have, for the most part, declined to present such evidence, it would be particularly inappropriate to rely upon a survey that not all participated in and in which the information reported is of a fairly general nature. Had the CLECs involved chosen to present such evidence directly in these workshops, there would have been ample opportunity to examine its foundations and to assess its credibility and weight. Moreover, some of the concerns expressed in the survey do not go to the standard that is relevant here. Where parity with retail operations is the applicable standard, absolute, as opposed to relative, observations about delays and lack of facilities are not persuasive.

Even if there is an argument to be made that there is a minimum baseline of performance that should be provided to CLECs, even if Qwest's own customers do not get that level of service, the nature of the Wyoming CAS survey, combined with the lack of supporting evidence from those CLECs who have participated in the workshops, does not allow for a determination of what that standard should be, let alone whether Qwest has met or can be expected to meet it. WCAS witness Walker moreover observed the "finger pointing" that appears to take place between Qwest and CLECs in matters of disagreement; what is missing is enough detailed information to allow a reasoned determination here of where blame lies, if blame there be at all.

The survey presented by the Wyoming CAS is not without benefit in these proceedings. It can be taken as evidence that Qwest has had historical performance problems in serving CLECs. What the survey does not do, however, is to lay a sufficient foundation for overcoming the belief that OSS testing and post entry performance plans may serve adequately to provide a basis for determining whether Qwest should secure Section 271 approval. It is not certain how this conclusion might have been different, had CLECs complied better with the repeated requests of the participating state commissions to make these workshops more focused on "real world" experience. That is speculative; what is not is that CLECs have stood largely silent on the question of supporting general complaints and concerns with detailed information relating to the kind of issues that at least some of them were willing to provide responses to in the Wyoming CAS survey.

Where that leaves us in these workshops is with the conclusion that we must look largely to the OSS test and the post entry assurance plan to guide final judgments on the kinds of performance issues that the WCAS survey raised. That opportunity will come; the commissions have already stated in their procedural orders that they will create a means for doing so.

V. Checklist Item 1 -Interconnection

Background - Interconnection

Section 271(c)(2)(B)(i) of the Telecommunications Act addresses the competitive checklist item involving interconnection: [An ILEC must provide] "…interconnection in accordance with the requirements of §§ 251(c)(2) and 252(d)(1)…" Section 251(c)(2) imposes upon Qwest:

> [t]*he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—*
>
> > *(A) for the transmission and routing of telephone exchange service and exchange access;*
> >
> > *(B) at any technically feasible point within the carrier's network;*
> >
> > *(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and*
> >
> > *(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 …*[8]

The FCC has defined the term interconnection as "…the linking of two networks for the mutual exchange of traffic."[9] Section 7.0 of the Qwest SGAT generally addresses interconnection issues.

Issues Resolved During This Workshop – Interconnection

1. Interconnection Service Quality

AT&T sought to add language to SGAT Section 7.1.1.1, for the purposes of: (a) assuring that the sections addressing interconnection are subject to this section's quality requirements and (b)

[8] 47 U.S.C. § 251(c)(2)

[9] 47 C.F.R. 51.5

applying state wholesale and retail service-quality requirements to Qwest's interconnection obligations.[10] AT&T's recommended changes to the SGAT language are set forth below:

> *7.1.1.1 QWEST will provide to CLEC interconnection at least equal in quality to that provided to itself, to any subsidiary, affiliate, or any other party to which it provides interconnection. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding interconnection are subject to this requirement. In addition, QWEST shall comply with all state wholesale and retail service quality requirements.*

Qwest changed the section to address this issue, which can therefore be considered closed.

2. Limiting Interconnection Options

AT&T objected to SGAT Section 7.1.1. language that limits interconnection at access tandems to the exchange of intraLATA toll or switched access traffic, claiming that this limit would create significant inefficiencies for CLECs. AT&T argued that CLECs should also be allowed to exchange local traffic at access tandems. AT&T cites 47 CFR § 51.305(a)(2) as allowing the exchange of local and access traffic at any technically feasible point within the Qwest network. AT&T said that it has already interconnected at Qwest access tandems throughout the 14-state region, which demonstrates technical feasibility.[11] AT&T's proposed changes to the Qwest language are shown below:[12]

> *7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's own network for the purpose of exchanging Exchange Service (EAS/Local traffic), Exchange Access (IntraLATA Toll) and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. QWEST will provide Interconnection at any technically feasible point within its network, including but not limited to, (i) the line side of a local switch; (ii) ~~at~~ the trunk side of a local ~~an end office~~ switch, (iii) ~~and on~~ the trunk connection points ~~of a local or access~~ for a tandem switch, (iv) central office cross-connect points, (v) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases, and (vi) the points of access to unbundled network elements. ~~QWEST will also provide interconnection (see Section 9 of this Agreement) at the line side of a local switch (i.e., local switching), central office cross-connection points, signal transfer points and points of access to unbundled network elements (see Section 9 of this Agreement).~~ "Interconnection" is as described in the Act and refers to the connection between networks for the purpose of transmission and routing of telephone exchange service traffic and exchange access traffic. ~~Interconnection is~~*

[10] Wilson Direct at ¶ 43.

[11] Affidavit of Kenneth L. Wilson Regarding Interconnection, Collocation and Resale; Exhibit WS1-ATT-KLW-2 (hereafter "Wilson Direct"), at ¶ 39.

[12] Wilson Direct at ¶ 41.

> ~~*provided for the purpose of connecting end office switches to end office switches or end office switches to local tandem switches for the exchange of Exchange Service (EAS/Local traffic); or end office switches to access tandem switches for the exchange of Exchange Access (IntraLATA Toll) or Jointly Provided Switched Access traffic. Local tandem to local tandem switch connections will be provided*~~

WCOM argued for a different change in the SGAT language, for the purpose of clarifying that interconnection includes all types of traffic, not just exchange service and exchange access traffic.[13] Its change to the relevant portion of SGAT Section 7.1.1 is shown below:

> *"Interconnection" is as described in the Act and refers to the connection between networks for the purpose of exchanging~~transmission and routing of telephone exchange service traffic and exchange access~~ traffic.*

At the workshop in Denver on December 18, 2000, the parties agreed to approve the section as contained in the SGAT 'Lite' marked WS1-QWE-TRF-1-4[14], and now included as follows in the "Frozen SGAT":

> *7.1.1 This Section describes the Interconnection of Qwest's network and CLEC's network for the purpose of exchanging Exchange Service (EAS/Local traffic), Exchange Access (IntraLATA Toll) and Jointly Provided Switched Access (InterLATA and IntraLATA) traffic. Qwest will provide Interconnection at any technically feasible point within its network, including but not limited to, (i) the line-side of a local switch (i.e., local switching); (ii) the trunk side of a local switch, (iii) the trunk connection points for a tandem switch, (iv) Central Office cross-connection points, (v) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases, and (vi) points of access to unbundled network elements. Section 9 of this Agreement describes Interconnection at points (i), (iv), (v), and (vi), although some aspects of these Interconnection points are described in Section 7. "Interconnection" is as described in the Act and refers, in this Section of the SGAT, to the connection between networks for the purpose of transmission and routing of telephone exchange service traffic and exchange access traffic at points (ii) and (iii) described above. Interconnection, which Qwest currently names "Local Interconnection Service" (LIS) is provided for the purpose of connecting end office switches to end office switches or end office switches to local or access tandem switches for the exchange of Exchange Service (EAS/Local traffic); or end office switches to access tandem switches for the exchange of Exchange Access (IntraLATA Toll) or Jointly Provided Switched Access traffic. Qwest tandem to CLEC tandem switch connections will be provided where technically feasible. Qwest local tandem to Qwest access tandem and Qwest access tandem to Qwest access tandem switch connections are not provided.*

This issue can be considered closed.

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[13] Testimony of Thomas Priday on Behalf of MCI WORLDCOM, Inc., September 1, 2000 (hereafter "Priday Direct") at page 6.

[14] Transcript of 12/18/00 at pages 32-33.

3. Single Points of Interconnection in Each LATA

WCOM objected to SGAT Section 7.1.2 language requiring a CLEC to establish a point of interconnection (POI) in each local calling area where it does business. Specifically, WCOM wanted to replace the second sentence of the section with the following language:

> *At CLEC's option, CLEC shall determine the most efficient number of interconnection points and the location of those points, subject to technical feasibility.*

McLeodUSA argued that CLECs should not be required to interconnect at more than one POI per LATA.[15] AT&T made a similar argument in opposition to Qwest's SGAT language, which would require a POI within each local calling area.[16] AT&T also objected to limitations on the types of interconnection methods available. AT&T sought to make the SGAT's list of interconnection method illustrative, rather than exhaustive.[17] In rebuttal testimony, Qwest proposed modifications to the language offered by AT&T.[18]

In Qwest's SGAT Matrix of December 8, 2000, this section is marked as a consensus section. The language in the SGAT filed that that time[19] (and now found in the Frozen SGAT) is as follows:

> *The Parties will negotiate the facilities arrangement used to interconnect their respective networks. CLEC shall establish at least one Physical Point of Interconnection in Qwest territory in each LATA the CLEC has local customers. The Parties shall establish, through negotiations, at least one of the following Interconnection arrangements : (1) a DS1 or DS3 Qwest provided entrance facility; (2) Collocation; (3) negotiated Mid-Span Meet POI facilities; (4) other technically feasible methods of Interconnection.*

This issue can be considered closed.

4. Hub Interconnection Arrangements

SGAT Section 7.1.2.4 describes hub interconnection arrangements, which Qwest agreed to provide through what it called a "LIS Inter Local Calling Area (LIS) Facility."[20] AT&T objected

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[15] Exhibit WS1-MCL-SAJ-3, at page 1.

[16] Wilson Direct at ¶ 45.

[17] Wilson Direct at ¶ 48.

[18] Rebuttal Testimony of Thomas R. Freeberg (hereafter Freeberg Rebuttal) at page 15.

[19] WS1-QWE-TRF-1-4.

[20] Wilson Direct at ¶¶ 62-67.

to these arrangements, which it said required it to establish a trunk from AT&T's POI to every Qwest end office in Qwest's local calling area, before it could serve a single customer. AT&T called this requirement identical to requiring a POI in every wire center, rather than merely in every LATA. AT&T raised related problems, such as the added cost resulting from the requirement in some cases to purchase transport from the Qwest private line tariff as a finished service, and the restriction of the use of these facilities by CLECs to interconnection only. AT&T recommended that the entire section be replaced by the following language:

> *7.1.2.4 Hub Location. The CLEC may establish a POI via a hub location by either providing its own facilities to the hub or by utilizing unbundled dedicated transport provided by QWEST. Spare facilities at the hub locations may be used for the transport of unbundled elements.*

WCOM sought clarification of this section, arguing that a CLEC should only have to provide physical interconnection where the CLEC both has NXXs and originates traffic. Therefore, it sought to add to SGAT Section 7.1.2.4.1 the term "originating NPA NXX" to modify the term "customers."

Ultimately, Qwest deleted all of this section[21] and it is marked as consensus on the SGAT Matrix of December 8, 2000. This issue can be considered closed.

5. Charges for Interconnection Trunking

A number of parties raised questions about charges under SGAT Sections 7.1.2.4.3 through 7.1.2.4.6. WCOM argued that Section 7.4.2.4.3 could be argued to require CLECs to pay for the facilities even if they were 2-way trunks (i.e., carrying calls from Qwest customers as well).[22] McLeodUSA asked what charges there would be for Direct Transport Trunks of over 20 miles in length under SGAT Section 7.1.2.4.3.[23] WCOM noted that, under Section 7.1.2.4.5, Qwest was only agreeing to reduce the costs for Qwest's traffic portion across the first 20 miles. WCOM argued that this provision would subsidize traffic originated by Qwest customers in cases where it traveled on trunks in excess of 20 miles in length. WCOM also objected to the application of private line tariff rates under SGAT Sections 7.1.2.4.4 and 7.1.2.6, arguing that prices should be based on TELRIC, not on the basis of access-tariff rates.

These sections were all deleted in the SGAT filed by Qwest for the December 18, 2000[24] workshop and are marked as "consensus" in the SGAT matrix of December 8, 2000. Therefore, this issue can be considered closed.

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[21] See WS1-QWE-TRF-1-4.

[22] Priday Direct at page 10.

[23] Exhibit WS1-MCL-SAJ-3.

[24] WS1-QWE-TRF-1-4.

6. Limits on LIS Trunk Traffic Types

McLeodUSA also objected to the SGAT Section 7.1.2.4.7 limitation that LIS trunks may be used only to transport local exchange traffic between Qwest and CLEC customers located within Qwest local calling area.[25] McLeodUSA argued that CLECs, like Qwest, should be free to use the trunks for other purposes. This section was also deleted by Qwest.[26] Therefore, this issue can be considered closed.

7. Reciprocal Compensation for Toll Traffic Exchanged

WCOM objected to the second sentence of SGAT Section 7.2.1.1, under which Qwest would apply its tariffed switched access rates to toll traffic exchanged in both directions between itself and CLECs.[27] WCOM proposed that each party apply its own individual tariffed intraLATA toll rates. Qwest resolved this issue by deleting the sentence that caused the objection. Therefore, this issue can be considered closed.

8. Defining Jointly Provided Switched Access Traffic

Qwest offered at workshops to change the way that SGAT Section 7.2.1.2.3 defines "Jointly Provided Switched Access" traffic. No other participant registered an objection to this technical change, to which the participants appear to have agreed in similar workshops in Arizona.[28] At the workshop held in Denver on December 18, the parties agreed that this issue was closed.[29]

9. One-Way Trunk Groups

AT&T sought a change in SGAT Section 7.2.2.1.2.1 to eliminate a preference for two-way trunk groups. Qwest made changes in the section to accommodate this request, which closes this issue, with one exception. AT&T continued to have a concern about routing of Qwest one-way trunks back to AT&T. This aspect of the issue, on which the parties could not agree, is addressed below with the other unresolved issues.

10. Obliging CLECs to Provide Transport to Qwest

AT&T objected to the requirement of SGAT Section 7.2.2.1.2.2 that CLECs provide transport to Qwest, which AT&T says is required neither by the Telecommunications Act of 1996 nor FCC rules implementing it.[30] Qwest resolved the issue by eliminating the reciprocal nature of the

[25] Exhibit WS1-MCL-SAJ-3.

[26] WS1-QWE-TRF-1-4.

[27] Priday Direct at page 11.

[28] See Issue Log Matrix in 7-State, 2/20/2001.

[29] Transcript of 12/18/00 at page 79.

[30] Wilson Direct at ¶ 69.

obligation to sell transport services. The section, after this change, only addresses CLEC purchases of transport services from Qwest. The Qwest change also responded to a question that McLeodUSA raised about leases from a third party.[31]

Qwest made a change to eliminate a similar problem in SGAT Section 7.2.2.1.3 and to address AT&T, WCOM, and McLeodUSA concerns about allowing Qwest to direct how a CLEC uses its collocation space.[32]

Therefore, this issue can be considered closed.

11. Interconnection Over Direct Trunks Where Available

The parties discussed a new SGAT section that was proposed at Exhibit WS1-ATT-KLW-5q to address how interconnection will occur in cases where there are and alternatively where there are not established direct trunks:

> *7.2.2.1.6 Regardless of the number of location routing numbers (LRNs) used by a CLEC in a LATA, Qwest will route traffic destined for CLEC customers via direct trunking where direct trunking has been established. In the event that direct trunking has not been established, such traffic shall be routed via a Qwest tandem.*

The language was incorporated into Qwest's frozen SGAT filing. Therefore, this issue can be considered closed.

13. Acceptance of Transit Traffic

WCOM expressed concern about Qwest's removal from SGAT Section 7.2.2.3.1 of interexchange carrier traffic from the definition of the "Transit Traffic" that Qwest agrees to accept. Transit traffic, from Qwest's perspective, is traffic that its customers neither originate nor terminate, but which Qwest's facilities carry between the customers of other entities. In response to this concern, Qwest changed the section to define traffic carried by interexchange carriers as "Jointly Provided Switched Access." After discussion of the issue on December 18, 2001, WCOM undertook the obligation to consider this issue further. There was no further mention of the issue and WCOM did not file a brief in this workshop. Therefore, the issue can be considered closed.

14. Applying Tariff Prices to Signaling for LIS Trunks

SGAT Section 7.2.2.6.1 required CLECs with their own signaling network to secure Out-of-Band Signaling from Qwest's FCC Tariff #5. AT&T objected, arguing that it should have connectivity through dedicated transport, that such transport should be provided at cost-based

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[31] Exhibit WS1-MCL-SAJ-3.

[32] Wilson Direct at ¶ 71, Priday Direct at page 11, and Exhibit WS1-MCL-SAJ-3.

prices, and that reciprocal compensation should apply.[33] Qwest made changes to this section; it said that they were sufficient to resolve this issue in Arizona workshops. The lack of briefing on this issue indicates that it can be considered closed.

15. 64 CCC Availability

AT&T was concerned that the terms of SGAT Section 7.2.2.6.2 limited CLECs more than Qwest is itself limited in the ability to route high-speed ISDN traffic over switch and transport facilities. AT&T noted Qwest's ability to use alternate routing and overlay network capabilities to avoid the ISDN-unfriendly capacity limits of older transmission facilities.[34] AT&T asked that the section be changed to require Qwest to provide CLECs with the same alternatives as are available to Qwest to provide 64CCC. Qwest agreed to change the section to provide such parity to CLECs. Therefore, this issue can be considered closed.

16. MF Signaling

AT&T recommended language that would allow access to MF signaling where SS7 is not available.[35] The language provided as follows:

> *7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by CLEC if the Qwest Central Office Switch does not have SS7 capability or if the Qwest Central Office Switch does not have SS7 diverse routing.*

The language contained in the "frozen" SGAT was similar; it provides as follows:

> *7.2.2.6.3 MF Signaling. Interconnection trunks with MF signaling may be ordered by CLEC if the Qwest Central Office Switch does not have SS7 capability.*

This language change resolved this AT&T issue, but there remains an unresolved issue concerning the case where there is SS7 capability, but not diverse routes for providing it. That issue is addressed below.

17. LIS Trunk Forecasting

SGAT Section 7.2.2.8.1 requires good faith efforts to produce an agreed-upon forecast of LIS trunk requirements. McLeodUSA observed that such information is very sensitive and that it was unclear why Qwest needed some of it. McLeodUSA also observed that there was no discussion of reciprocal forecasts.[36] The section requires good faith efforts by the parties, which of necessity

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[33] Wilson Direct at ¶¶ 72-74.

[34] Wilson Direct at ¶¶ 75-77.

[35] Exhibit WS1-ATT-KLW-5-R.

[36] Exhibit WS1-MCL-SAJ-3.

includes consideration of these kinds of issues during the joint efforts that it will take to develop the forecasts. At the workshop in Denver, Qwest witness Freeberg described the reasons for the forecasts.[37] McLeodUSA made no additional comments, raised no remaining concerns, and did not brief this issue (McLeodUSA filed no brief at all). Therefore, this issue can be considered closed.

18. Commission Monitoring of LIS Trunk Provisioning

WCOM asked that there be public service commission monitoring of Qwest performance in provisioning LIS trunks. This issue is better addressed in the context of the post entry performance program (PEPP) or through requests made directly to the state commissions. The participants at the workshop agreed to close the issue without an SGAT language change.

19 Switch Growth Time Intervals

AT&T raised a concern about SGAT Section 7.2.2.8.3 language stating that CLEC jobs requiring switch growth necessarily involved minimum durations of six months. AT&T agreed with this limit only in cases where Qwest would require new switching modules or frames, as opposed, for example, to merely needing to add a new circuit card.[38] AT&T proposed a language change to broaden the interval language and to require Qwest to use CLEC forecasts to assure the availability of switch capacity. Qwest made changes to address AT&T's concerns.

McLeodUSA questioned whether Qwest could unilaterally change the timelines established by the section. McLeodUSA also observed that CLECs need the ability to amend forecasts to meet unexpected growth.[39] The Qwest language change that addressed AT&T's concern about intervals also addressed the McLeodUSA timelines question. In addition, nothing in this SGAT section precludes changes in forecasts, whose preparation, as noted above, is subject to good faith requirements by the terms of the SGAT language.

Therefore, this issue can be considered closed.

20. Responsibility to Build to Forecasts

AT&T objected to the reciprocal nature of the SGAT Section 7.2.2.8.4 obligation to build and it recommended a language change that would require Qwest to ensure the installation of sufficient capacity to meet CLEC forecasts.[40] Qwest did not remove the reciprocity requirement, but did propose a modified version of the language offered by AT&T.[41] At the workshop, Qwest noted

[37] Transcript of 12/18/00 at page 140.

[38] Wilson Direct at ¶ 79.

[39] Exhibit WS1-MCL-SAJ-3.

[40] Wilson Direct at ¶¶ 81-83.

[41] Freeberg Rebuttal at page 24.

that it had adopted this language. While there was general discussion on this section and other related sections, no objections were raised and no briefs addressed this issue,[42] which, therefore can be considered closed.

21. Information Exchange for Joint Planning Meetings

SGAT Section 7.2.2.8.7 addressed the information that should be exchanged to support joint planning meetings.[43] AT&T asked that the section be expanded to include a provision obligating Qwest to provide a detailed list of: (a) all its spare capacity on switches and in the state involved, and (b) capacity on all inter-office routes that could affect interconnection traffic. AT&T asserted that this disclosure was warranted by existing capacity problems in the Qwest network. Qwest revised the section in a manner that addressed AT&T's concerns.

McLeodUSA sought protection for this confidential information.[44] Qwest added a provision recognizing the confidentiality of the information and limiting its use to network planning activities.

Therefore, this issue can be considered closed.

22. Other Planning Information

McLeod raised several questions about the application of SGAT Section 7.2.2.8.8, including control over changes to the form used to provide information and the need for information about other tandem providers.[45] After discussion of this issue at the workshop, the parties agreed that it could be closed without further changes to the SGAT.

23. Updates to Information Qwest Makes Available Through Databases

SGAT Section 7.2.2.8.9 discusses information that Qwest makes available through its Interconnections (ICONN) Database and the Local Exchange Routing Guide (LERG). AT&T wanted to provide for regular updates of these databases.[46] The participants agreed that this issue could be closed without requiring any change to the SGAT.

24. Protection of Sensitive Forecast Information

AT&T wanted to strengthen the SGAT Section 7.2.2.8.12 provisions that deem CLEC forecast information to be confidential, by precluding Qwest from making it available to marketing, sales

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[42] Transcript of 12/18/00 at pages 149-158.

[43] Wilson Direct at ¶¶ 87-88.

[44] Exhibit WS1-MCL-SAJ-3.

[45] Exhibit WS1-MCL-SAJ-3.

[46] Wilson Direct at ¶¶ 89-91.

or strategic planning personnel.[47] McLeodUSA made a similar request.[48] Qwest changed the section to respond to these requests.[49] Therefore, this issue can be considered closed.

25. Resizing Underutilized Trunk Groups

SGAT Sections 7.2.2.8.13 and 7.2.2.8.14 allowed Qwest to resize CLEC trunk groups used at less than 60 percent and it allowed Qwest to refuse to augment trunk groups used at less than this level. AT&T was concerned about harm to CLECs where there were valid reasons for under utilization (e.g., erratic growth patterns or the banking of capacity to avoid held-order problems).[50] AT&T proposed to change the first section to avoid resizing where a CLEC provides its reasons for underutilization to Qwest and to assure that resizing left a CLEC with at least 25 percent spare capacity. It proposed to amend the second section by changing Qwest's right to refuse augments to a right to dispute a CLEC request for augments when existing trunk groups are being used at less than the required 60 percent level. McLeodUSA raised similar concerns.[51] Qwest changed the language to drop the 60 percent factor to 50 percent, and to eliminate the augment provision entirely. These changes were satisfactory to the participants.

WCOM recommended that the three-month measurement period for underutilization be extended to six months, in order to account for typical usage fluctuations.[52] In light of the changes already made by Qwest, and the fact that WCOM did not raise this issue again, suggests that the six-month recommendation no longer needs to be considered.

Therefore, this issue can be considered closed.

26. Assessment of Construction Charges

AT&T expressed concern about a unilateral right of Qwest to assess construction charges in "extraordinary circumstances."[53] AT&T wanted to require Qwest to secure Commission approval before it could impose such charges. McLeodUSA and WCOM raised a similar concern.[54] Qwest changed the language to require such approval, to expedite consideration of the

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[47] Wilson Direct at ¶¶ 92-94.

[48] Exhibit WS1-MCL-SAJ-3.

[49] Freeberg Rebuttal at page 25.

[50] Wilson Direct at ¶¶ 95-97.

[51] Exhibit WS1-MCL-SAJ-3.

[52] Priday Direct at page 13.

[53] Wilson Direct at ¶¶ 98-100.

[54] Exhibit WS1-MCL-SAJ-3 and Priday Direct at page 13.

issue by the commission, and to provide for a sharing of the construction costs involved. Therefore, this issue can be considered closed.

27. Trunking Service Standards

AT&T considered the service-standards language of SGAT Section 7.2.2.9.1 to be too general.[55] It proposed incorporating state requirements, ROC standards, and a maximum of 1 percent blocking. It also proposed to require weekly reports on trunk usage. Qwest made changes to incorporate state and ROC standards and to provide monthly reports. This change satisfied AT&T. Therefore, this issue can be considered closed.

28. Preference for Two-Way Trunking

WCOM felt that the SGAT Section 7.2.2.9.2 requirement to use two-way trunking "wherever possible" was too inflexible to accommodate new CLECs with smaller traffic volumes.[56] Qwest agreed to remove the section from the SGAT. Therefore, this issue can be considered closed.

29. Exchange of Traffic Only in Qwest Local Calling Areas

AT&T argued that the SGAT Section 7.2.2.9.7 requirement to exchange traffic only in Qwest local calling areas violated the FCC requirement allowing CLECs to choose their point of interconnection.[57] Qwest agreed to remove this section. Therefore, this issue can be considered closed.

30. Alternate Traffic Routing

Qwest proposed to change the language of SGAT Section 7.2.2.9.8 to eliminate the term "local" when describing the trunk groups that can be used to address overflows on direct trunk groups. There was no opposition to this change. The frozen SGAT filed by Qwest reflects the deletion of the term. Therefore, this issue can be considered closed.

31. Delivery of CLEC Traffic to Qwest Remote Switches

AT&T objected to the SGAT Section 7.2.2.9.9 prohibition on delivering CLEC traffic to Qwest's remote switches.[58] Qwest resolved the issue by allowing delivery to these switches in those cases where it may have arranged similar trunking for itself or others. Therefore, this issue can be considered closed.

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[55] Wilson Direct at ¶¶ 102-103.

[56] Priday Direct at pages 13 and 14.

[57] Wilson Direct at ¶ 111.

[58] Wilson Direct at ¶ 113.

32. LIS Acceptance Testing

Qwest agreed to expand available testing to include other testing needed to ensure operability or satisfaction of technical parameters, and accepted language proposed by AT&T.[59] Therefore, this issue can be considered closed.

33. Sharing the Costs of Testing

AT&T argued that Qwest should share in the costs of acceptance testing under SGAT Section 7.2.2.10.2.2, because interconnection trunks operate for the mutual benefit of the parties.[60] Qwest resolved the issue by changing the section to make CLECs solely responsible for testing costs in the event that they request tests beyond those required for acceptance purposes.

34. Repair Testing

Qwest agreed to add an SGAT Section (7.2.2.10.3), which provides that testing after repairs for operability and technical parameter verification will be at no additional CLEC expense.[61] Therefore, this issue can be considered closed.

35. LIS Trunk Ordering Information

AT&T observed that the provisions of SGAT Section 7.4.1 needed to be reconciled with the Qwest "Interexchange Carrier Resource Guide" (IRRG), in order to assure that the required information for ordering would be supplied.[62] Qwest made several detail changes in the section to address this issue.

36. Using the LERG to Obtain Ordering Information

AT&T argued that the information required from CLECs under SGAT Section 7.4.2 is identical to the information that Qwest tells CLECs to get from the LERG, as opposed to asking Qwest for it. Therefore, AT&T continued, Qwest should get that information from the LERG as well, rather than requiring CLECs to supply it.[63] McLeodUSA raised a similar issue.[64] Qwest changed the section to reflect the availability of information from the LERG. Therefore, this issue can be considered closed.

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[59] Freeberg Rebuttal at page 26.

[60] Wilson Direct at ¶ 115.

[61] Freeberg Rebuttal, at page 27.

[62] Wilson Direct at ¶ 118.

[63] Wilson Direct at ¶¶ 11119-122.

[64] Exhibit WS1-MCL-SAJ-3.

37. Channel Information For Entrance Facilities

Qwest proposed to add to SGAT Section 7.4.3 an obligation on parties ordering entrance DS1 or DS3 entrance facilities to identify the channels to be used to provide circuits. No participant expressed any objection or reservation about this change. Therefore, this issue can be considered closed.

38. Joint Planning Meetings

AT&T wanted to amend SGAT Section 7.4.4 in order to require that planning meetings produce commitments to implementing the resulting trunk plans.[65] Qwest changed the SGAT section to provide for such commitment language. Therefore, this issue can be considered closed.

39. Provisioning Intervals for Interconnection Trunks

AT&T objected to the SGAT Section 7.4.6 individual-case-basis intervals for initial trunking arrangements at any interconnection location, arguing that this approach was inconsistent with ROC standards and other provisions of the SGAT.[66] Qwest changed this section to make the ICB approach applicable only to new switch locations. It also changed Section 7.4.7 to: provide (a) that Interconnect Resale and Resource Guide (IRRG) would address provisioning intervals, (b) that the IRRG's intervals would be consistent with ROC requirements, and (c) that Qwest would notify CLECs of IRRG changes. These changes resolve AT&T's issue about provisioning intervals for interconnection trunks. The last of these changes also addressed the question of McLeodUSA about whether Qwest could unilaterally change the intervals.[67] Therefore, this issue can be considered closed.

40. Defining the Service Date For LIS Charges

SGAT Section 7.4.8 allowed Qwest to apply cancellation charges or to startcharging for LIS service if the CLEC could not begin to accept the service 30 days after the original service date. AT&T wanted that date defined, in order to provide clarity about the issue of charging.[68] Qwest resolved this issue by clarifying that the trigger date is the date when Qwest advises the CLEC that the requested service is available. Therefore, this issue can be considered closed.

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[65] Wilson Direct at ¶ 124.

[66] Wilson Direct at ¶ 127.

[67] Exhibit WS1-MCL-SAJ-3.

[68] Wilson Direct at ¶ 129.

Issues Remaining in Dispute - Interconnection Checklist Item 1

1. Indemnification For Failure to Meet Performance Standards

AT&T wanted to add to the SGAT a new section (7.1.1.1.2) that would hold CLECs harmless in the event that Qwest failed to meet the service quality standards of Section 7.1.1.1, as AT&T proposed to amend them.[69] The new AT&T SGAT language would provide the following:

> *7.1.1.1.2 In the event that QWEST fails to meet the requirements of Section 7.1.1.1, QWEST shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees*

AT&T's brief[70] defended this provision as creating an "incentive" for Qwest to perform adequately for "competitors it would like to put out of business." Qwest objected to the provision on a number of grounds:[71]

> Duplication with the Post-Entry Performance Plan
>
> Lack of FCC requirements to provide indemnification for untimely interconnection trunk installation
>
> Failure of any prior 271 proceeding to consider indemnification as a checklist compliance issue
>
> Existence of adequate damage and indemnification provisions generally applicable and set forth elsewhere in the SGAT

Proposed Issue Resolution: It is certainly correct to observe that the relationship between ILECs and CLECs is not typical of the circumstances that bring vendors or suppliers, on the one hand, together with buyers or customers, on the other hand, in the business world. A material portion of the advantage that each stands to gain under the Telecommunications Act of 1996 clearly must come in part at the expense of the other. Thus, the degree of mutuality (or, more precisely, its lack) in the relationship does raise legitimate questions about the need for special incentives to encourage performance.

However, it must also be recognized that there presently exists another, parallel effort to address the matter of providing such incentives. It is the ROC effort to develop a Post Entry Performance Plan (PEPP). The PEPP workshops are specifically addressing what form of financial incentives

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[69] Wilson Direct at ¶ 43.

[70] AT&T Brief at page 6.

[71] Qwest Brief at pages 11 and 12.

and penalties are appropriate to deal with the particular circumstances of Qwest's relationship with CLECs on an ongoing basis. These workshops recognize the treatment that the FCC has given to this issue in Section 271 proceedings involving other RBOCs. Therefore, the need to address the question of incentives already has been recognized, and it has been assigned to a distinct set of processes for disposition. It is, at the least, untimely to address the question of the need for incentives here, while those other processes remain underway.

There exists the question of damages, which is somewhat different from the question of instituting particular incentives to assure adequate Qwest performance. [72] Indemnity as a means for apportioning responsibility for damages is a legitimate tool of commercial contracting. In particular, it has value in protecting one party from liability where the harm results solely from the conduct of the other. However, there are several problems with AT&T's proposed application of the tool in this context.

First, interconnection by definition involves the mutual exchange of traffic. The customers not only of a CLEC, but also of Qwest, must depend upon the successful performance of both parties. Each party has facilities that support such performance. Yet AT&T's clause would not allow for a reasoned determination of responsibility in the event that harm occurs. Whether a CLEC's own conduct contributed to the harm appears to be irrelevant under the proposed standard. Moreover, AT&T's clause does not subject it to a corresponding indemnification obligation. The obligations of CLECs and ILECs may differ under the Telecommunications Act of 1996, but those of CLECs are still substantial, in particular as they concern the exchange of traffic. The AT&T proposal does not reflect any degree of mutuality, even accounting for the differing nature of the parties' legal and regulatory obligations.

Second, the question of liability for damages is of general relevance to the SGAT, not just to interconnection. AT&T has not demonstrated why there are unique considerations here, in the context of interconnection.[73] Thus, this matter is better addressed in the context of the SGAT's general terms and conditions, which will happen later in these workshops.

Third, the acceptance of AT&T's proposed language would raise a distinct problem in the particular context of state commission performance standards. Adopting that language would be tantamount to deciding, on behalf of the participating state commissions, that, as between Qwest and CLECs, the responsibility for failure to meet applicable state standards should in all cases fall upon Qwest. It is to be expected that states will adopt differing types of standards applicable to wholesale and retail service, according to the particular types of behavior that they wish to induce. The same is true for penalties and rewards for meeting those standards. The adoption of an indemnification clause will transfer the burden of those penalties, without considering the objectives and policies that motivated a particular state to adopt them. Such a transfer may be

[72] The PEPP is presumably also addressing the issue of the impact of substandard performance on the competitive marketplace as a whole, which typically represents another, distinct "tier" of compensation.

[73] For example, see the treatment of the indemnity question under the Resale topic, where distinguishing circumstances are present, given the nature of pricing and service delivery in that case.

appropriate in some circumstances; however, it should happen in cases of shared performance responsibilities only after the state involved has decided, on the basis of facts and arguments brought before it, that such a transfer is consistent with its particular objectives and policies.

Fourth, while the AT&T proposal would transfer the penalties involved in failing to meet state standards; it does not address any of the rewards that states may provide for particularly good performance. In this respect, AT&T effectively transfers the pain of poor performance but not any gain from strong performance.

Therefore, there is not a sound basis for concluding that Qwest fails to meet the Section 271 checklist on the grounds that its SGAT fails to include a provision indemnifying CLECs in the event of a failure to meet the standards applicable to interconnection.

2. Entrance Facilities as Interconnection Points

Entrance facilities are common aspects of the interface between local carriers and interexchange carriers, whose networks must be interconnected in order to allow long distance calls to be completed. Entrance facilities in this context have been secured through interstate tariffs for a long time. Much of this issue depends on whether and how CLECs should be able to use and pay for facilities that they have secured for interstate purposes when they want to use a portion of those facilities for interconnection under the Telecommunications Act of 1996.

Citing the FCC's First Report and Order at paragraph 191, AT&T expressed concern that Qwest was improperly transferring DS1 and DS 3 entrance facilities, which are an access world concept, to the realm of local exchange interconnection.[74] AT&T considered Dedicated Transport to be the correct and only element that should be required for interconnection trunks. AT&T construed Qwest's language as requiring both an Entrance Facility and Direct Trunked Transport where a CLEC needs to get to the Qwest switch in situations where the CLEC has no switch within the boundary of the Qwest serving wire center. In short, AT&T argued that Qwest would require it in such cases to pay the higher costs associated with securing two components where Dedicated Transport should alone suffice. Therefore, AT&T sought to change SGAT Section 7.1.2.1 as follows:

> *7.1.2.1 ~~Entrance Facility~~Leased Facilities. Interconnection may be accomplished through the provision of ~~a~~ DS1 or DS3 ~~entrance facility~~dedicated transport facilities. ~~An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to entrance facilities, when CLEC uses such Private Line Transport service for multiple services. Entrance Facilities may not be used for interconnection with unbundled network elements~~ Such transport extends from the Qwest's switch to the CLEC's switch location or the CLEC's POI of choice.*

[74] Wilson Direct at ¶ 52.

Qwest's brief[75] divided this issue into three parts:

> Whether entrance facilities can be used to access unbundled network elements
>
> If so, whether CLECs can commingle local and all types of toll calls on the same trunk group
>
> If so, whether CLECs should be allowed to secure lower (i.e., TELRIC) rates for the portion of such facilities used for interconnection.

As to the first part, Qwest agreed to allow access to UNEs, but opposed commingling (outside of the 9th Circuit) and the ratcheting of rates.

Proposed Issue Resolution: Qwest has agreed to allow access to UNEs. This agreement is to adopt the Washington resolution of the first part of this issue. The Washington order held that:[76]

> *Qwest must modify its SGAT to permit interconnection using entrance facilities at any technically feasible POI chosen by the CLEC, including interconnection for access to UNEs, and must revise SGAT section 7.1.2 as agreed at the workshop. See Tr. at 1250.*

Qwest should change the SGAT here to reflect this same commitment. The remaining two parts of the issue are resolved in the *Commingling of InterLATA and Local Traffic on the Same Trunk Groups* issue in the ***Reciprocal Compensation*** portion of this report.

3. EICT Charges for Interconnection Through Collocation

AT&T originally objected to the SGAT Section 7.1.2.2 requirement for CLECs to pay for the facilities; i.e., Interconnection Tie Pairs (ITP), which connect Qwest and CLEC facilities at interconnection points.[77] AT&T later noted that Qwest's intent was actually to charge for what Qwest calls Expanded Interconnection Channel Termination (EICT). AT&T argued that the POI in collocation situations is the CLEC's collocated equipment; therefore, Qwest should either: (a) pay for the facilities needed between the Qwest switch and the collocated CLEC equipment or (b) require Qwest to provide for the connection under a "reciprocal compensation obligation." AT&T noted also that CLECs do not charge Qwest in similar situations for connection at their central offices. AT&T recommended the following change to the SGAT section:

> *7.1.2.2 Collocation. Interconnection may be accomplished through the Collocation arrangements offered by QWEST. The terms and conditions under which Collocation will be available are described in Section 8 of this Agreement.*

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[75] Qwest Brief at pages 17 and 18.

[76] Washington Utilities And Transportation Commission Administrative Law Judge's *Initial Order Finding Noncompliance In The Areas Of Interconnection, Number Portability And Resale*, Docket Nos. UT-003022 and UT-003040.

[77] Wilson Direct at ¶ 56.

> ~~*When interconnection is provided through the Collocation provisions of Section 8 of this Agreement, the Interconnection Tie Pair (ITP) rate elements, as described in Section 9 will apply in accordance with Exhibit A. The rates are defined at a DS0, DS1 and DS3 level.*~~

AT&T also requested that the EICT charge references be removed from SGAT Section 7.3.1.2.[78]

Qwest agreed in its brief to accept the resolution of this issue as proposed in the Draft Washington Order addressing this issue.[79] That order provided as follows:[80]

> *Qwest is responsible for constructing and paying for facilities on its side of the POI. Therefore, Qwest must remove restrictions in SGAT section 7.3.1.2.1 associating ITPs with UNE provisioning and not interconnection, and remove the application of EICT rate elements in Sections 7.1.2.2 and 7.3.1.2.1.*

The Draft Washington Order, which Qwest accepts, is consistent with AT&T's request.

Proposed Issue Resolution: The Draft Washington Order reflects a resolution of this issue that is in accord with FCC requirements and it comports with AT&T's request. Therefore, this issue can be considered to be resolved upon Qwest's making of the SGAT changes required by that order.

4. Mid-Span Meet POIs

AT&T objected to the requirement that mid-span meet POIs be required to be within Qwest wire center boundaries, because such a provision would require CLECs to deploy trunks to every Qwest wire center, which is unnecessary and economically burdensome.[81] AT&T sought the right to interconnect in this fashion at any technically feasible point, and to lease dedicated transport from Qwest in the event that it chose not to construct its own facilities to the meet point. AT&T also objected to precluding the use of mid-span meet points to gain access to unbundled network elements. AT&T recommended the following change in SGAT Section 7.1.2.3:

> *7.1.2.3 Mid-Span Meet POI. A Mid-Span Meet POI is a negotiated Point of Interface, ~~limited to~~<u>for</u> the Interconnection of facilities between one Party's switch and the other Party's switch. The actual physical Point of Interface and facilities used will be subject to negotiations between the Parties. The Mid-Span*

[78] AT&T Brief at page 13.

[79] Qwest Brief at page 17.

[80] *Draft Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 at ¶ 156.

[81] Wilson Direct at ¶¶ 58-60.

> *Meet POI shall be located within the ~~Wire Center~~LATA boundary of the QWEST switch. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI. Spare facilities used for a~~A~~ Mid-Span Meet POI ~~shall not~~may be used by CLEC to access unbundled network elements.*

AT&T argued that Qwest's prohibition on access to UNES would promote an inefficient use of facilities and it would be contrary to an FCC holding that supported such use.[82] Qwest agreed to eliminate the wire center boundary requirement.[83] Qwest cited the FCC's First Report and Order[84] as allowing the prohibition, but nevertheless, it also agreed to allow this form of interconnection to be used for access to UNEs, provided that the CLEC pay the UNE rate for the entire facility.[85] AT&T's brief suggested that the UNE rate should apply only to the portion of the facilities being used to gain access to UNEs.[86]

Proposed Issue Resolution: Qwest urges an overly broad interpretation of ¶553 of the First Report and Order. That paragraph explicitly says no more than that shared-cost meet-point arrangements make sense only in the context of interconnection, not in the context of UNE access. The language quoted in Qwest's brief does not at all address the question of whether, having established interconnection through meet points, some portion of the capability that is created can be used for UNE access. The portion of the paragraph that AT&T cites addresses UNE pricing in "a section 251(c)(3) access situation." Overall, paragraph 553 establishes the proposition of shared cost responsibility for interconnection meet points and CLEC cost responsibility for UNE access. What the paragraph does not directly address is responsibility for costs where trunks are used for both purposes. Such joint use should be supported from an economic point of view, otherwise economic waste and unwarranted competitive barriers would result from the need to install two sets of facilities where one is sufficient.

As to cost sharing, the overall intent of the FCC is reasonably clear from paragraph 553 and it is very sound as well. Costs should be shared where use is joint; they should be borne solely where the facility will form a link between two other portions of a CLEC's network. There has been no argument that cost apportionment would be particularly difficult in the circumstances at issue here. The best way to preserve the sound construct that the FCC has prescribed is to require that the SGAT apportion cost responsibility according the portion of the facilities being used for UNE access and the portion being used for interconnection. Therefore, SGAT Section 7.1.2.3 should be amended by eliminating the following language:

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[82] AT&T Brief at page 13, citing UNE Remand Order ¶¶ 221 and 222.

[83] Frozen SGAT language for Section 7.1.2.3.

[84] Qwest Brief at footnote 47, citing ¶ 553 of the First Report and Order.

[85] Qwest Brief at page 20.

[86] AT&T Brief at page 14.

> *A Mid-Span Meet POI shall not be used by CLEC to access unbundled network elements.*

The following language should replace it:

> *A CLEC may use remaining capability in an existing Mid-Span Meet POI to gain access to unbundled network facilities; provided that the CLEC shall be obliged to compensate Qwest under the terms and conditions applicable to UNEs for the portion of the facility so used. In determining such portion, the decision shall be based to the extent practicable on the guideline that the portion so determined should correspond to the nature and extent of facilities that would be required to provide access to elements in the absence of a concurrent use for interconnection. Qwest may seek appropriate relief from the Commission if it can demonstrate that this provision has been used to occasion the installation of new facilities that, while claimed necessary for interconnection, were actually intended for UNE access.*

5. Routing of Qwest One-Way Trunks

As noted in the earlier report section addressing resolved issued, Qwest did eliminate the SGAT Section 7.2.2.1.2.1 preference for two-way trunks. AT&T remained unsatisfied with a particular issue, however. Where a CLEC chooses one-way trunks, Qwest must install its own one-way trunks to terminate its traffic to that interconnecting CLEC. In particular, AT&T wanted CLEC, rather than Qwest, control over the routing of Qwest's one-way trunks back to the CLEC. AT&T's reasoning was that a CLEC should have the right to control Qwest's routing, while the CLEC controls its routing to Qwest, because Qwest retaliates against CLEC one-way routing decisions by routing from each of Qwest's end offices, which causes facility exhaust.[87]

Proposed Issue Resolution: AT&T proposes a solution to the problem of "retaliation" that is far too broad. In essence, its solution gives it the right to determine key variables in the cost and configuration of Qwest facilities that would bring to it the same kind of traffic that AT&T delivers to Qwest. Where AT&T chooses one-way trunks, it demands the right to choose its own interconnection points and routes, considering it appropriate for others, particularly Qwest, to rely upon AT&T's incentive to act rationally and economically. However, when Qwest must as a result install its own one-way trunks back, AT&T asks that AT&T control interconnection points and routing, now arguing that Qwest will be motivated by different kinds of motives.

Implicit in AT&T's request is also the assumption that it will not have any motive to require Qwest to incur unnecessary or uneconomic costs, or at least a presumption that Qwest's economic loss is not an issue. Having questioned Qwest's motives, AT&T can hardly argue that it is immune to some of the same kinds of influences in corresponding circumstances.

[87] AT&T Brief at page 18.

Qwest should have a reasonable degree of control over the interconnection points and routing for the one-way trunks that they have to build because CLECs themselves have chosen to interconnect with Qwest through one-way trunks. If one-way trunking from Qwest generally causes inefficient use of CLEC networks, then CLECs must consider it in exercising their unilateral rights about where and how to interconnect with Qwest's network. The Act does not anywhere state or even imply that CLECs may choose Qwest's POIs. Moreover, if one-way trunking can be used in a retaliatory manner, then it should be dealt with in the SGAT's general terms and conditions, which is the preferable place to provide for relief from such actions, which surely cannot be limited either to interconnection trunking or to bad faith actions only by Qwest against CLECs.

6. Direct Trunked Transport in Excess of 50 Miles in Length

Qwest proposed a new SGAT section to address transport trunks in excess of 50 miles in length. It considered this section necessary in light of the fact that dropping its opposition to interconnection at access tandems could necessitate direct trunk transport lengths of several hundred miles.[88] Qwest's proposed language was:

> *7.2.2.1.5 If Direct Trunked Transport is greater than fifty (50) miles in length, and existing facilities are not available in either Party's network, and the Parties cannot agree as to which Party will provide the facility, the Parties will construct facilities to a mid-point of the span.*

Qwest justified the 50-mile limit by citing a number of court and FCC decisions limiting ILEC responsibility to "adapt" their facilities for use by CLECs.[89] AT&T argued that this distance limit violated CLEC rights to choose the most efficient points of interconnection under 47 U.S.C. § 251(c)(2)(A) and under paragraph 209 of the FCC's First Report and Order.[90] Qwest pointed out that the FCC clearly contemplated distance limitations on ILEC build-outs, by stating that its belief that:[91]

> *state commissions are in a better position than the Commission* [FCC] *to determine the appropriate distance that would constitute the required reasonable accommodation of interconnection.*

Qwest noted that, in the same paragraph, the FCC described as being "limited" the build-out of facilities from the local exchange carrier's network. Qwest argued that the same reasoning applicable to meet-points applies to the provision of direct-trunk transport.

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[88] Qwest Brief at page 6.

[89] Qwest Brief at pages 6 and 7.

[90] AT&T Brief at pages 19 and 20.

[91] First Report and Order at ¶ 553.

Proposed Issue Resolution: The issue here is not one of obliging Qwest to create a superior network or to adapt the nature or capability of its network to meet CLEC needs. There is nothing unique about the nature of the facilities involved; they are the same ones that all participants envision as the means to provide interconnection. The installation of trunks in excess of 50 miles would not make Qwest's network superior or operationally different; it would only mean that it would have some number of longer-length facilities in it.

As AT&T points out, Qwest has not presented evidence that it would fail to recover its costs of installing the very long interconnection trunks needed to provide direct trunk transport in the circumstances at issue. It is conceivable that increasing distance alone may alter the risks of cost recovery; however, no evidence to that effect has been presented here. It might also be true that cost recovery for two 30-mile interconnection trunks is not materially different from cost recovery for one 60-mile trunk. Clearly, it would be rational to consider in the setting of prices any differences that length causes in total costs to be incurred or in the risks of recovering them. Moreover, there may be factual support for a conclusion that there is some distance beyond which it may be presumed that cost recovery is so doubtful as to support a maximum limit.

The issue as framed is essentially an economic one, and more particularly a costing one. It should be made with the benefit of the kinds of data and analysis that one finds in costing dockets, but which has not been presented here. Without such evidence, there is not a sound basis for deciding whether the proposed 50-mile limit is appropriate. This SGAT provision should be eliminated.

7. Multi-Frequency Trunking

As was discussed previously in the resolved issues portion of this report, the parties agreed to a resolution of the SGAT Section 7.2.2.6.3 issue involving the provision of MF trunking in the case of Qwest switches without SS7 capability. Qwest agreed to provide it. AT&T also sought such trunking where there is SS7 capability, but where it cannot be provided over multiple routes. The concern is for the case where capability will be lost by a link failure for which there is not alternate path.[92] Qwest argued that it does not provide such redundant capability for itself when it must rely on that single link routing and that the FCC has not ever addressed the issue. Qwest also said that it should not be required to provide such redundancy on a generally available basis, because it falls outside reasonably foreseeable CLEC demand.[93]

Qwest does concede the accuracy of the central element of AT&T's concern, which is that its customers will have greater problems in making calls than Qwest's customers will. Qwest said that the differences could be minimized;[94] AT&T said that it has already lost the competition for customers who know enough about the network to realize that there is a differential service

[92] Exhibit WS1-ATT-KLW-5R; December 18, 2000 transcript at pages 134 and 135; December 19, 2000 transcript at page 103.

[93] Qwest Brief at page 16.

[94] Qwest Brief at page 17.

impact in the case of signal loss, depending on whether they take service from Qwest or from AT&T.[95]

Proposed Issue Resolution: These facts raise a legitimate parity of service question that has tangible competitiveness repercussions. Qwest noted that the draft order from Washington found Qwest's BFR solution appropriate,[96] but that draft order was clearly founded on evidence that every central office in Washington had diverse SS7 routing.[97] There is no such evidence here for any of the participating states. Where a CLEC is competing for customers, particularly those who understand the consequences of issues of this type, the time involved makes the BFR process an unsatisfactory solution. Low foreseeable demand should not prevent the obligation to make an offering for which the BFR process is likely to be commercially ineffective. Therefore, the SGAT should be changed to add the following at the end of Section 7.2.2.6.3:

> *or if the Qwest Central Office Switch does not have SS7 diverse routing.*

8. Obligation to Build To Forecast Levels

AT&T objected to the provision of SGAT Section 7.2.2.8.6 allowing Qwest to build to the lower forecast pending resolutions of disagreements between a Qwest and a CLEC forecast.[98] It recommended the following change in the language:

> *7.2.2.8.6 In the event of a dispute regarding forecast quantities, ~~the~~ ~~Parties~~ QWEST will make capacity available in accordance with the ~~lower~~ higher forecast, if QWEST has held any CLEC or IXC orders for lack of capacity during the previous six month period while attempting to resolve the matter informally. In the event QWEST has no held orders for that period, the lower of the two forecasts will be used while attempting to resolve the matter informally. If the Parties fail to reach resolution, the Dispute Resolution provision of this Agreement shall apply.*

McLeodUSA argued that this provision required clarification.[99]

Qwest made a substantial change in this provision. It agreed to build to higher forecasts, requiring deposits in cases where historical trunk usage by the CLEC involved failed to reach a

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[95] AT&T Brief at page 21.

[96] Qwest Brief at page 17.

[97] *Draft Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 at ¶ 117.

[98] Wilson Direct at ¶¶ 84-86.

[99] Exhibit WS1-MCL-SAJ-3.

threshold level. The changed language also provides for a deposit amount refunds in the event that future use approached forecast levels.

AT&T, however, continued to express concerns about some aspects of the revised language. First, it noted that Qwest's own trunk utilization is, like CLEC's only at a roughly 50 percent level, thus calling into question the validity of setting that usage factor as a deposit trigger. AT&T also observed that the ratio used by Qwest to trigger deposits also measures utilization against forecasts rather than against currently installed trunks, making it an even more inappropriate measure. In particular, according to AT&T, CLECs in Qwest's territory have an inducement to be generous in forecasting, in light of Qwest's problems in providing sufficient network facilities. AT&T also argued that Qwest does not "penalize itself for underutilization." AT&T also observed that there is no reservation of the trunks for a particular CLEC even after it has advanced costs for their installation; Qwest may find other uses for them even before a CLEC orders them. AT&T construed the Qwest language as potentially requiring a deposit even before Qwest will build to the lower forecast, which presumably will be its own.[100]

The Qwest brief argued that Qwest has accepted a central aspect of the AT&T request, which is to agree to assure that capacity is available as forecasted by CLECs. However, Qwest argued that undertaking this obligation has material risk, because building forecasted interconnection trunks does not ensure that CLECs will order them, or, if they do, that usage of them will be sufficient to generate adequate cost recovery. Therefore, Qwest continued, its commitment to build should be accompanied by a generally corresponding CLEC commitment to assure reasonable levels of compensation.[101]

Proposed Issue Resolution: AT&T's argument contains a number of assertions that are not correct. First, Qwest does in fact suffer a penalty in the event that it installs trunks that it does not use sufficiently. Whether it builds for CLECs or for itself, Qwest must make the investment to install trunks. Thereafter, whether its own usage or CLEC usage does not generate sufficient revenue to carry the investment, Qwest faces the same overall economic result. Second, AT&T incorrectly interpreted the SGAT as requiring deposits before Qwest will build even to the lower forecast. Section 7.2.2.8.6.1 of Qwest's "Frozen SGAT" for this workshop applies deposit requirements only to the portion of the higher forecast that is in excess of the lower forecast. In other words, Qwest will build up to the limit of the lower forecast without requiring a deposit.

Qwest is correct in arguing that its obligation to make investments at CLEC request without assurance of recovery should be balanced by an obligation to assure that it does not bear disproportionate risk for that investment. The difficulty lies in determining where that balance should be struck. In deciding that question, two particular portions of AT&T's arguments have substantial weight:

Using forecasts as a base for measuring utilization

[100] AT&T Brief at pages 22 and 23.

[101] Qwest Brief at page 13.

Holding CLECs responsible for underutilization even if the trunks are otherwise used

Qwest's language considers usage only over a six-month period for deposit refund purposes. While the record does not disclose what kind of cost recovery periods are typical of such facilities, it is clear that they are intended to serve over lives much longer than half a year. Given the inability to match usage growth (which takes place in small increments that occur continuously) perfectly with augmentation of facilities to serve that usage (which come less frequently and in larger increments) it is natural to expect measurements of usage against forecasted capacity installations to produce numbers significantly smaller than would measurements of usage against installed capacity.

The evidence of record supports a conclusion that a 50 percent usage, measured against installed capacity, would not be considered by Qwest or CLECs to be atypical or problematical from an operational point of view.[102] The SGAT should not impose economic consequences under a utilization standard that exceeds current experience in the Qwest network. Therefore, the SGAT should be changed to require deposits (and to return deposits) on the basis of utilization of installed facilities, not forecasted facilities.

Even if use of forecasted trunks were the appropriate measure, there would remain two material implementation issues.

First is the considerable problem of deciding which forecast to use for taking the measurement. Changes by CLECs in their forecasts would raise the question of which to use for purposes of determining initial deposit requirements and later returns of deposit amounts. For example, SGAT Section 7.2.2.8.4 contemplates quarterly forecasts, each of which will cover periods of two future years. The deposit language requires an 18 month look-back and a 6-month look-ahead, which means that there will be overlapping and presumably differing forecasts to consider. Qwest's language does not address the problem of which to use, nor is it self-evident which forecast should be used for which purpose.

The second implementation problem is the impact that Qwest problems can have on a CLEC's satisfaction of the standard. If Qwest is unable to install facilities that CLECs would have used heavily, then their actual usage versus forecasts will be lowered. This result is worse even than fortuitous; it will have occurred for reasons that have everything to do with the quality of Qwest performance and nothing to do with CLEC performance. Qwest's SGAT language would return deposits already made in such a case, but it does nothing to exclude these circumstances from the determination of whether to take a deposit in the first place. In other words, if usage versus forecasts in the prior measurement period were lower because of failure of Qwest to install facilities, that lower usage would count in deciding whether a deposit was to be required. Again, there is no evident drafting solution to this problem.

[102] February 26, 2001 transcript at pages 75, 84 and 85.

Having decided that forecasts are not a proper measurement base, there arises next the question of whether a usage factor of 50 percent of installed capacity is appropriate for the SGAT. The SGAT provides that a CLEC must fail to meet the 50 percent standard at all times during the preceding 18 months. Clearly, a CLEC can, by meeting the standard in any of these 18 months, avoid a deposit requirement, even where its average utilization for the entire 18-month period is substantially below 50 percent. It can be safely assumed that, in practice, deposits will not be required unless a CLEC's usage falls considerably below an average of 50 percent. Thus, the use of a 50 percent-usage factor for installed facilities cannot be considered excessive.

AT&T has raised a valid concern about CLEC responsibility for the costs of facilities that it may not use, but that Qwest otherwise does eventually find useful in filling other needs. The issue here is striking a balance that considers Qwest's risk of cost recovery. As AT&T and Qwest have observed, CLEC forecasts contribute to Qwest construction plans, but Qwest is not building them for the account even of a CLEC that has advanced the costs of installing them. No CLEC has the right to control the use of those trunks in the event that it cannot make sufficient use of them. Yet, under Qwest's language there will be cases where CLECs have in essence paid in advance for those trunks. If nobody uses them, Qwest has a legitimate concern about investment recovery. If anybody uses them, however, the circumstances change significantly. In such a case, the Qwest investment does produce benefits and it does eliminate cost recovery risk. Under Qwest's language, those benefits are doubled if it gets the deposit from a CLEC, but the use is by another party, which could be Qwest itself.

There should thus be a mechanism that allows a CLEC to recover deposit amounts for facilities that are used by others, including but not limited to Qwest itself. Otherwise, this SGAT provision loses the risk-balancing character that justified it, becoming instead a penalty to discourage generous CLEC forecasting. The need for a penalty has not been established, and, as Qwest has successfully argued in other contexts, penalties should not be liberally incorporated into the SGAT. Therefore, the SGAT should contain a provision that allows deposit refunds where other use of facilities puts Qwest in the same position it would have been in had the CLEC met the use levels warranting a return of deposit amounts. The following addition to the SGAT will accomplish this purpose:

> *7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.*

9. Interconnection at Qwest Access Tandem Switches

Qwest divides its networks in a fashion that produce what it calls "local" tandem switches and "access" tandem switches. SGAT Section 7.2.2.9.6 precluded interconnection at access-tandem switches, allowing interconnection only at local-tandem and end-office switches. AT&T argued that this provision violates a requirement of 47 U.S.C. § 251(c)(2)(B) that interconnection permitted at any technically feasible point. AT&T further argued that Qwest's refusal to allow

interconnection at these access tandems would require AT&T to bear the unnecessary expense of trunking to Qwest end-office switches, merely to serve a single customer.[103] McLeodUSA[104] and WCOM[105] also took this position. AT&T argued that Section 7.4.5, like others in the SGAT to which it objected earlier, improperly precluded interconnection at Qwest access tandems.[106] AT&T also argued that the last two sentences of Section 4.11.2 also serve to reinforce improper restrictions on interconnection at access tandems.

Sprint objected to the provisions of SGAT Section 7.2.2.9.6, because they denied CLECs a statutory right, confirmed by FCC regulations, to interconnect in any technically feasible manner and at no more than a single point for each LATA.[107] Sprint cited paragraphs from the FCC's First Report and Order:

> *The interconnection obligation of section 251(c)(2) allows competing carriers to chose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination of traffic.*
>
> * * *
>
> *Of course, requesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under Section 251(c)(2).*[108]

Qwest opposed the use of its access tandem for routing local traffic, because it had constructed what it called two separate networks: one to move local traffic, and one for switched access transport. Qwest argued that it did not route local traffic on its toll/switched access network, nor did it route toll or switched access traffic on its local transport network. Qwest raised the concern that the proposal to interconnect for the exchange of local traffic on its switched access network would strand capacity on its local network, and create capacity shortfalls on its switched access network.[109] Qwest did agree earlier to some easing of the restrictions on interconnection at its access tandem switches, but kept them in place in a number of cases. Then, in its brief, Qwest agreed to a significant additional change, by accepting the resolution of this issue as set forth in

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[103] Wilson Direct at ¶¶ 105-109.

[104] Exhibit WS1-MCL-SAJ-3.

[105] Priday Direct at page 14.

[106] Wilson Direct at ¶ 125.

[107] Sprint Brief at pages 12 and 13.

[108] First Report and Order at ¶¶ 172, 220, fn. 464.

[109] Freeberg Rebuttal page 6.

the *Draft Washington Order*, which came in a context similar to this one.[110] Paragraph 147 of that order provides:

> *Qwest's must revise the SGAT to permit interconnection for the exchange of local traffic at the point determined by the CLEC, in conformance with the language proposed by AT&T. Qwest must not require interconnection at the local tandem, at least in those circumstances when traffic volumes do not justify direct connections to the local tandem. Qwest must do so regardless of whether capacity at the access tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem.*

It became clear from the briefs that another issue arose from the resolution of the issue in Washington. Specifically, Qwest asserted that it was not willing to amend the last sentence of SGAT Section 7.1.1, as had been requested by CLECs.[111] The sentence precluded connections between Qwest local and access tandems and between Qwest access tandems. Qwest opposed the elimination of the last sentence. Qwest stated that the only material consequence of retaining this sentence is that t would require, for areas served by more than one Qwest access tandem, that a CLEC provide for trunking to each tandem in whose serving area the CLEC had customers. The purpose, Qwest said, was to avoid overloading tandem switches by routing all calls through a single switch. [112] Qwest said that this limitation would not discriminate against CLECs because Qwest did not route its own local calls between its tandem switches.

AT&T argued that this sentence would also impose inefficient interconnection by precluding inter-tandem trunking even where it would not create a risk of tandem switch exhaust. AT&T also expressed concern that it raised the potential for discrimination against CLECs, since Qwest did have trunks between its access tandems.[113]

Proposed Issue Resolution: Qwest conceded the technical feasibility of interconnection at its access tandems,[114] focusing instead on impacts to its network, should CLECs be able to exchange local traffic at Qwest's access tandems. As AT&T demonstrated, technical feasibility is the correct standard, citing paragraph 78 of the SWBT Texas 271 Order:

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[110] Qwest Brief at page 3, citing the *Draft Order*, Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 at ¶ 146 and 147.

[111] Qwest Brief at page 3. The amendment Qwest opposed was actually the recommended deletion of the sentence as proposed in the Wilson Direct at pages 15 and 16.

[112] Qwest's Response To Facilitator's Request For Supplemental Information, April 20, 2001.

[113] AT&T's Response to SGAT Section 7.1.1. Inquiry, served by e-mail on April 20, 2001.

[114] December 19, 2000 transcript, at page 5.

> [The] *Incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the sate public utility commission that interconnection at that point is technically infeasible*

However, having recited that standard, the Washington order imposed two potential qualifications on its decision to eliminate requirements to interconnect at local tandems or end offices. Because Qwest agreed only to an SGAT change that applies such qualifications, we must address them. The two qualifications are:

> Leaving open the door for requiring interconnection at local tandems or end offices where justified by traffic volumes
>
> Allowing Qwest to require interconnection at local tandems or end offices, provided that Qwest makes such interconnection available at a cost no greater than would be the case if interconnection had occurred at the access tandem.

Neither of these limitations strictly comports with the breadth of the FCC requirement that CLECs be permitted to choose their POIs.[115] They allow Qwest to limit interconnection at access tandems even in the absence of a showing that such interconnection is technically infeasible. However, narrowing them can make their application consistent with the concept of technical feasibility. It has not been demonstrated that higher levels of traffic interchange either will not or cannot affect the operation of Qwest's network as designed and implemented. There is an evidentiary basis for concluding that Qwest's network configuration as it concerns the division of tandem switches can cause problems at higher usage levels. The focus of the discussion on network impacts in this workshop has certainly been at low levels of traffic interchange. The following language represents an appropriate means for allowing consideration of limits on interconnection at access tandems. Such language should replace Section 7.2.2.9.6 of the SGAT, because it balances the need to allow CLECs to choose their POI, while allowing Qwest to have network impacts considered:

> *The parties shall terminate Exchange Access Service (EAS/Local) traffic on tandem or end office switches. When there is a DS1 level of traffic (512 BHCCS) between CLEC's switch and a Qwest End Office Switch, Qwest may request CLEC to order a direct trunk group to the Qwest End Office Switch. CLEC shall comply with that request unless it can demonstrate that such compliance will impose upon it a material adverse economic or operations impact. Furthermore, Qwest may propose to provide interconnection facilities to the local tandems or end offices served by the access tandem at the same cost to the CLEC as interconnection at the access tandem. If the CLEC provides a written statement of its objections to a Qwest cost-equivalency proposal, Qwest may require it only: (a) upon demonstrating that a failure to do so will have a material adverse affect on the operation of its network and (b) upon a finding that doing so will have no material adverse impact*

[115] FCC First Report and Order at ¶ 172.

> *on the operation of the CLEC, as compared with interconnection at such access tandem.*

Qwest defended the last sentence of SGAT Section 7.1.1 on the grounds that it would avoid the tandem exhaust in areas served by multiple Qwest access tandems. Qwest said that such exhaust might occur if CLECs could route all traffic through only one of the multiple access tandems. Qwest also said that its proposal would not discriminate against CLECs because Qwest itself did not use its tandems in a fashion similar to that proposed by CLECS (i.e., routing local calls over trunk groups between access tandems). However, Qwest's language is not limited to cases where such trunk groups would threaten exhaust, nor would it allow comparable treatment for CLECs should Qwest alter its policy generally or in specific cases. To address these concerns, the last sentence of Section 7.1.1 should be changed to read as follows:

> *New or continued Qwest local tandem to Qwest access tandem and Qwest access tandem to Qwest access tandem switch connections are not required where Qwest can demonstrate that such connections present a risk of switch exhaust and that Qwest does not make similar use of its network to transport the local calls of its own or any affiliate's end users.*

SGAT Section 7.4.5 also limits traffic exchange at access tandems. No reason for including the section, other than to provide such a limit, has been offered. As this reason is not valid, the section, appearing otherwise to be unnecessary, should be deleted. The last two sentences of SGAT Section 4.11.2 also reinforce the limits on traffic exchange at access tandems. There having been offered no other reason for their inclusion, they too should be removed from the SGAT.

10. Inclusion of IP Telephony as Switched Access in the SGAT

Qwest sought to include Internet Protocol (IP) telephony as "switched access" traffic in the SGAT. AT&T objected, on the basis that the FCC has specifically exempted such traffic from access charges.[116] AT&T specifically objected to the inclusion of jointly provided switched access language in the SGAT in Sections 7.5.1 and 4.57.[117] Qwest's frozen SGAT removes the last portion of Section 7.5.1. In its brief, AT&T continued to object to certain provisions of SGAT Sections 4.39 and 4.57, along with unspecified portions of SGAT Sections 7.3.1.1.3.1 and 7.3.2.2 and along with other sections that were not at all identified.[118] Qwest agreed to remove the IP telephony language from SGAT Sections 4.39 and 4.57.[119]

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[116] AT&T Brief at pages 34 and 35.

[117] Wilson Direct at ¶¶ 130-133.

[118] AT&T Brief at page 35.

[119] Qwest Brief at footnote 50.

Proposed Issue Resolution: Qwest has removed the disputed portions of the SGAT directly addressing IP telephony. Sections 7.3.1.1.3.1 and 7.3.2.2 address Internet-bound traffic generally, not IP telephony particularly. That issue is addressed later, in the ***Reciprocal Compensation*** section of this report. Moreover, AT&T has not made clear what other provisions raise similar problems; therefore, a foundation has not been laid for striking any additional language from the SGAT to bring it into compliance with this checklist item.

11. Charges for Providing Billing Records

SGAT Sections 7.5.4 and 7.6.3 allow Qwest to charge CLECs for providing billing records. WCOM objected to the Qwest charges for providing these records. WCOM argued that each party must provide these records to the other; historically neither has charged the other for doing so.[120] Section 7.5.4 applies when local carriers must exchange records where necessary to bill an interexchange carrier for jointly provided switched access and database inquiries. Section 7.6.3 applies to transit traffic, requiring payment when a carrier seeks information necessary to bill the originating carrier.

Qwest agreed to make these charges applicable to each party, but rejected the WCOM request to waive them entirely. Qwest argued that if a carrier wants to be paid by the interexchange carrier or the originator of transit traffic, it should pay the costs of other carriers who must provide information related to the securing of such payment. Qwest disputed WCOM's claim that it had provided such services in the past without charge; furthermore, Qwest did not consider past custom determinative in deciding whether such charges are appropriate now.[121]

Proposed Issue Resolution: WCOM raised this issue in its original comment, but did not file a brief. Its argument about past practice is not dispositive. The issue to be resolved is whether it is appropriate to charge a CLEC for a service that the CLEC desires in order to allow it to secure revenue. In addition, the charge here is reciprocal; Qwest pays the same if it takes a similar service from CLECs. The need for this service is a clear incident of interconnection; the service benefits the requesting carrier; the requesting carrier is not obliged to take the service; and the charges apply as well to similar Qwest requests of CLECs. There can be no question that a carrier asked to provide service to another in the course of the requesting carrier's efforts to secure revenues should receive fair compensation for the service rendered. Moreover, there being no claim that the charges have been determined improperly. There is no basis for questioning these provisions of Qwest's SGAT.

12. Combining Traffic Types on the Same Trunk Group

Sprint objected to the separate trunk group requirements of SGAT Section 7.2.2.9.3.2, which it contended would require inefficient overlay networks to mirror "old" incumbent networks. Sprint expressed particular concern about the refusal to permit CLECs to take advantage of

[120] Priday Direct at page 15.

[121] Qwest Brief at pages 20 and 21.

capacity on existing long-distance networks to carry local/EAS traffic. Sprint responded to Qwest's reliance on a Bell South decision,[122] in which the FCC did not compel combined routing of local, intraLATA, and access traffic. Sprint observed that this ruling was based on a finding that combination was then not technically feasible. Sprint said that Qwest did not make any showing of infeasibility here, that the Washington and Oregon Commissions have issued rulings demonstrating feasibility, and that a later Bell South interconnection agreement with Sprint demonstrates a change of position by that ILEC on the matter of feasibility.[123]

Sprint further argued that the application of factors such as "percentage of local use" (PLU) in other states show that there are means for addressing the identification of the amount of toll traffic that qualifies for access charges.

Proposed Issue Resolution: This issue is resolved in the *Commingling of InterLATA and Local Traffic on the Same Trunk Groups* issue in the ***Reciprocal Compensation*** section of this report.

[122] *Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Dkt. No. 98-121 (FCC 98-271, Oct. 13, 1998)

[123] Sprint Brief at pages 7 through 12.

VI. Checklist Item 1 - Collocation

Background - Collocation

Pursuant to 47 U.S.C §251(c)(6), Qwest must:

> *…provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements ate the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.*

47 CFR § 51.323(a) specifies that, "an incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers." Physical collocation is essentially an offering that enables a requesting carrier to place its own equipment in the premises of the incumbent for interconnection and access to UNEs. Virtual collocation occurs when the incumbent provides the equipment for CLEC use. In order to satisfy this checklist item, Qwest must demonstrate compliance with the collocation provisions of the Act and the FCC regulations.[124]

Issues Resolved During This Workshop – Collocation

1. Limiting Collocation to Wire Centers

AT&T objected to the SGAT Section 4.12 definition of collocation as being unduly limited to wire centers, arguing that technical feasibility should be the only criterion for limiting locations where Qwest should allow collocation.[125] AT&T recommended the following change to the definition:

> *4.12 "Collocation" is an arrangement where ~~space is provided in a QWEST Wire Center for the placement of~~ Qwest provides space in any technically feasible premises for the placement of CLEC's equipment to be used for the purpose of Interconnection or access to QWEST unbundled network elements.*

AT&T also objected to SGAT Section 8.1.1 language that would limit collocation to wire centers. It recommended the following language changes to reflect the FCC's broader definition of the "premises" at which collocation should be made available: [126]

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[124] See generally 47 CFR §§51.323, 51.5

[125] Wilson Direct at ¶ 169, citing the FCC First Report and Order at ¶ 574.

[126] Wilson Direct at ¶ 172.

8.1.1 Collocation allows for the placing of equipment ~~owned~~ by CLEC within Qwest's premises, including central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities and adjacent facilities, where technically feasible, ~~Wire Center~~ that is necessary for accessing unbundled network elements (UNEs), ancillary services, or~~and~~ Interconnection. Collocation includes the leasing to CLEC of physical space in a Qwest premises ~~Wire Center~~, as well as the resources necessary for the operation and economical use of collocated equipment, such as the use by CLEC of power; heating, ventilation and air conditioning (HVAC); and cabling in Qwest's premises ~~Wire Center~~. Collocation also allows CLECs to access Interconnection Distribution Frames (ICDF) for the purpose of accessing and combining unbundled network elements and accessing ancillary services. There are six types of Collocation available pursuant to this Agreement – Virtual, Caged Physical, Shared Caged Physical (including sublease collocation), Cageless Physical, Interconnection Distribution Frame, and Adjacent Collocation.

AT&T generally sought to replace the SGAT terms "wire center" and "central office" with the term "premises" where collocation locations are being addressed:

8.1.1.5	8.1.1.5.1	8.2.1.10	8.2.1.11	8.2.1.19
8.2.1.23	8.2.2.2	8.2.2.3	8.2.3.2	8.2.3.4
8.2.4.2	8.2.4.3.2	8.2.4.7	8.2.4.8	8.2.5.1
8.3.2.6	8.3.3.2	8.3.3.4	8.4.3.1	8.6.1.3

WCOM made a similar argument, seeking generally to use the term "premises" rather than "wire centers" to describe locations where collocation may take place.[127] NEXTLINK also testified to the importance of allowing collocation at remote terminals.[128] Rhythms also objected to limiting collocation to "wire centers."[129]

After having generally agreed to the CLEC-recommended approach in workshops in other states, Qwest offered a different approach here. Under this revised approach, Qwest offered what it

[127] Priday Direct at page 19.

[128] LaFrance Direct at page 16.

[129] *Issues List of Rhythms Links, Inc. Regarding Checklist Items 1, 11, and 14*, September 22, 2000 (Rhythms Comments) at page 9.

called "Remote Collocation" to address collocation at outside-plant type structures. Qwest defined remote collocation in SGAT Section 8.1.1.8.

Thus, rather than generally extending the SGAT's collocation provisions to all "premises," Qwest decided to limit caged, cageless physical, virtual, and shared collocation to central offices, while making remote collocation available at other Qwest premises. Qwest generally agreed with the changes to SGAT Section 4 and to Section 8.1.1. However, it offered its remote collocation approach, which would obviate the need to deal with the use of the term "wire centers" in the other cited sections. Qwest did offer that, should its remote collocation approach not be accepted, it would be willing to revert to its agreement in other states to adopt the CLEC-recommended approach in those other sections.[130]

No participants expressed disagreement with this approach or with the way it was reflected in changes that Qwest made to the SGAT. Therefore, this issue can be considered closed, except for the questions of whether (a) virtual collocation is available at remote premises and (b) whether new forms of collocation require the use of the BFR process. Those issues are discussed below.

2. ICDF Collocation

WCOM argued that ICDF Collocation was not a collocation type, but rather a method for obtaining UNE combinations. Therefore, WCOM wanted to remove the ICDF language from the Collocation section of the SGAT. Qwest agreed to remove the language from Section 8.1.1 and throughout Section 8.0, and to limit it to Section 9.0, which addresses UNE combinations. WCOM agreed that cross-references in Section 9 would address its concerns over the ICDF language.[131] Therefore, this issue can be considered closed.

3. Virtual Collocation Repair

McLeodUSA wanted to amend SGAT Section 8.1.1.1 to cite specifically Qwest's obligations not just to install and maintain, but also to repair, in cases of virtual collocation.[132] Qwest's frozen SGAT filing reflects this change; therefore this issue can be considered closed.

4. Maximum Caged Physical Collocation Space

McLeodUSA objected to the SGAT Section 8.1.1.2 limit of 400 square feet for caged physical collocation. [133] Qwest agreed to remove the limitation, which has been eliminated in Qwest's frozen SGAT filing.[134] Therefore, this issue can be considered closed.

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[130] Rebuttal Testimony of Margaret S. Bumgarner for Qwest Corporation on Checklist Item No. 1 – Collocation & Checklist Item No. 11 – Number Portability (Bumgarner Rebuttal), September 18, 2000, at page 11 through 13.

[131] Priday Direct at page 19.

[132] Exhibit WS1-MCL-SAJ-4.

[133] Exhibit WS1-MCL-SAJ-4.

5. Minimum Square Footage Requirements

WCOM argued that the 9-foot minimum requirement of SGAT Section 8.1.1.3 was inappropriate, because the only minimum space standard allowed by the FCC is that required for a single bay, which in the future could be less than 9 feet.[135] Qwest agreed to remove the 9-foot limit.[136] Therefore, this issue can be considered closed.

6. Subleasing Collocation Space Among CLECs

AT&T wanted to change SGAT Section 8.1.1.4 to make it clear that a CLEC could sublease to another CLEC physical collocation space that the first CLEC had obtained from Qwest (whether or not caged), in as small as single-bay increments. AT&T would make each CLEC responsible to Qwest only for payment of its share of the space involved.[137] Qwest agreed to make the requested change.[138]

McLeodUSA questioned why Qwest should be involved in prorating costs among CLECs in the case where the application that covered installation came from a single CLEC.[139] The language of this SGAT section, particularly as reflected in Qwest's frozen SGAT filing, makes it clear that Qwest cannot limit CLEC rights to sublease to other CLECs.

Therefore, this issue can be considered closed.

7. Adjacent Collocation Definition

AT&T wanted to change SGAT Section 8.1.1.6, in order to make the definition of adjacent collocation consistent with FCC requirements.[140] Qwest agreed to the recommended changes, but objected to establishing a set interval for adjacent collocation, because of the wide range of circumstances that might exist, such as CLEC construction of a new building.[141] This issue can be considered closed, subject to the general discussion of intervals, which follows in this report's following discussion of collocation issues that remain unresolved.

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[134] Bumgarner Rebuttal at page 14.

[135] Priday Direct at page 20.

[136] Bumgarner Rebuttal at page 15.

[137] Wilson Direct at ¶ 166.

[138] Bumgarner Rebuttal at page 15.

[139] Exhibit WS1-MCL-SAJ-4.

[140] Wilson Direct at ¶ 178, citing 47 CFR § 51.323(k)(3).

[141] Bumgarner Rebuttal at page 16.

8. Adjacent Collocation Terms and Conditions

AT&T objected to the use of an individual-case-basis (ICB) and largely undefined approach for setting terms and conditions for all collocation, urging instead the adoption of SGAT language (in Sections 8.2.6 and 8.4.5) that would provide details about securing building permits, allowing CLEC construction, providing power and other services, performing post-construction inspections, precluding CLEC moves if space should become available after adjacent collocation was provided, providing ordering details, and setting firm intervals for the delivery of requested space.[142]

Qwest agreed to the Section 8.2.6 changes with some clarification. It also agreed to the Section 8.4.5 changes, with the exception that Qwest would not agree to standard intervals for adjacent collocation, citing the wide variety of circumstances and construction needs that can be involved.[143] This issue can be considered closed; however, AT&T did raise an objection in its brief to the SGAT's failure to provide standard prices for predictable forms of adjacent collocation. AT&T noted, however, that the identification of standard adjacent collocation types and prices for them were better handled in dockets at which detailed cost information can be presented.[144]

Therefore, this issue can be considered closed, without limiting the opportunity to raise such cost issues in subsequent proceedings.

9. Limiting Obligations to Feasibility and Technical Standards

AT&T wanted to strike from SGAT Section 8.2.1.1 a provision limiting Qwest's general collocation obligations to technical and requirements and performance standards. AT&T wanted to replace it with one obliging Qwest to comply generally with applicable state and federal law.[145] WCOM also objected to the limiting provision of this section.[146] Qwest agreed to change the section to address these concerns.[147] Therefore, this issue can be considered closed.

10. Collocation of Switching-Capable Equipment

SGAT Section 8.2.1.1 substantially restricted the collocation of remote switching units (RSUs) and other equipment with switching capability by:

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[142] Wilson Direct at ¶ 179.

[143] Bumgarner Rebuttal at pages 44 and 57 .

[144] AT&T Brief at page 63, objecting to ICB pricing, but not mentioning the question of intervals.

[145] Wilson Direct at ¶ 180.

[146] Priday Direct at page 20.

[147] Bumgarner Rebuttal at page 18.

> Prohibiting their collocation where intended by the CLEC solely for switching or enhanced services
>
> Allowing Qwest to prohibit collocation where Qwest satisfied the state commission that the equipment would not be used for interconnection or access to UNEs
>
> Requiring CLECs to provide in advance an inventory of switching equipment and a description of how it would be used for interconnection or UNE access
>
> Requiring CLECs to remove RSUs at their expense, should Qwest be successful in appeals challenging the legal right to collocate them at Qwest premises.

AT&T objected to this section, arguing that the refusal to allow the collocation of RSUs would unduly delay the development of competition in rural states, citing Idaho, Iowa, Montana, North Dakota, Utah, and Wyoming specifically. AT&T argued that the inability to collocate and to use the switching capability of RSUs would cause the unnecessary use of direct circuits and the creation of "wasteful" CLEC interconnections.[148] Therefore. AT&T recommended changing Section 8.2.1.1 to: (a) explicitly allow interconnection of RSUs and the use of their switching capabilities, and (b) eliminate the conditions and restrictions of Qwest's section.

WCOM wanted to change the definition of equipment in SGAT Section 8.1.1, in order to allow the collocation of equipment with switching capability.[149] McLeodUSA questioned the definition of "switching," and wanted to allow CLECs to self-certify their compliance with the equipment limitations of SGAT Section 8.2.1.2.[150] Jato also raised several questions about the equipment limitations of SGAT Section 8.2.1.2.[151]

Qwest's testimony opposed the collocation of RSUs, but did agree to allow CLECs to collocate DSLAMs, ATM, and packet switches.[152] However, Qwest later agreed to allow the collocation of RSUs, as shown in its frozen SGAT filing:

> *8.2.1.2.3 Remote Switching Units (RSUs) also meet this legal standard when used for Interconnection or access to unbundled network elements for purposes of providing Local Exchange Service.*

Therefore, this issue can be considered closed.

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[148] Wilson Direct at ¶¶ 183 and 184.

[149] Priday Direct at page 19.

[150] Exhibit WS1-MCL-SAJ-4.

[151] Initial Testimony of Andrew Newell on behalf of Jato Communications, Inc. (Newell Direct), at page 2.

[152] Bumgarner Rebuttal at page 19.

11. UNE Demarcation Points in Collocation Situations

WCOM testified that the placement of the demarcation point for UNEs inside the CLEC collocation space would cause problems, due to the fact that each party is responsible for maintenance on its side up to the demarcation point. If some of the equipment for which Qwest has maintenance responsibility is within the CLEC collocation space, then CLECs will be required to undertake the inefficient act of dispatching their personnel to allow Qwest access to the equipment that Qwest must maintain. Therefore, WCOM wanted to change the demarcation point to a location outside the CLEC collocation space.*[153]* Qwest agreed to modify the SGAT to respond to this concern.*[154]* Therefore, this issue can be considered closed.

12. Direct Connection of CLEC and Qwest Equipment

AT&T sought a change in SGAT Sections 8.2.1.4 and 8.2.1.5 to remove any requirement for intermediate frames, in order to allow CLECs to make the same kinds of connections to Qwest that Qwest uses for its own cross connections.[155] AT&T also argued that Section 8.3.1.11 should be modified to make it clear that intervening ICDFs are not required.[156] WCOM made a similar argument.[157] Jato made a similar argument about Section 8.3.1.11.[158]

Qwest made an addition to Section 8.2.1.5, which allows direct connection, and which Qwest said proved satisfactory in workshops in other states.[159] No participant expressed objections to this language, which is included in Qwest's frozen SGAT filing, nor did any brief this issue. The issue can therefore be considered closed.

13. Incorporating Technical Publications By Reference

SGAT Section 8.2.1.8 refers to a number of technical documents that AT&T said it had not seen. AT&T objected to indirectly including in the SGAT documents that might be inconsistent with SGAT provisions, arguing that any relevant portions should be placed directly into the SGAT.*[160]* Qwest removed the references.*[161]* Therefore, this issue can be considered closed.

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[153] Priday Direct at page 21.

[154] Bumgarner Rebuttal at page 19.

[155] Wilson Direct at ¶ 186.

[156] Wilson Direct at ¶ 224.

[157] Priday Direct at page 21.

[158] Newell Direct at page 11.

[159] Bumgarner Rebuttal at page 20.

[160] Wilson Direct at ¶ 187.

[161] Bumgarner Rebuttal at page 21.

14. Safety Standards

AT&T wanted to change the provisions of SGAT Section 8.2.1.8 in several ways:

> Making only the Level 1 safety requirements of the Network Equipment Building System (NEBS) applicable, and explicitly excluding the NEBS performance standards
>
> Making only the safety requirements of the cited technical publications applicable
>
> Limiting all other Qwest safety requirements to those that Qwest applies to itself.[162]

AT&T also sought to make the last of these three changes in the SGAT Section 8.2.1.17 requirements regarding earthquake ratings. [163] AT&T made a similar request with respect to limiting the technical standards referred to in SGAT Section 8.2.2.5.[164] AT&T made a similar request with respect to the NEBS reference in SGAT Section 8.2.3.9, asking as well in that case for the explicit right to challenge before a state Commission or a court any decision by Qwest to halt construction for non-compliance.[165] AT&T also raised its NEBS non-safety standards concern and its problem with mere references to technical publications under SGAT Section 8.2.3.12, which deals with caged physical collocation standards.[166]

WCOM testified that the use of NEBS must also be limited to Level 1 safety requirements, in order to comply with FCC requirements. WCOM also asserted that the incorporation by reference of technical publications should not be permitted, because it would give Qwest the opportunity to unilaterally change applicable requirements.[167] Jato also testified in support of limiting the application of NEBS to Level 1 safety standards and against the incorporation of technical documents by reference into the SGAT.[168]

Rhythms also requested a similar limitation on the application of NEBS, and asked that safety standards be specified in the SGAT.[169]

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[162] Wilson Direct at ¶ 189.

[163] Wilson Direct at ¶ 196.

[164] Wilson Direct at ¶ 207.

[165] Wilson Direct at ¶ 212.

[166] Wilson Direct at ¶ 215.

[167] Priday Direct at page 22.

[168] Newell Direct at page 3 and various other places.

[169] Rhythms Comments at page 8.

Qwest agreed to change SGAT Section 8.2.1.8 to address the NEBS Level 1 safety standards issue, to provide parity between Qwest and CLECs with respect to imposing safety and engineering standards, and to eliminate references to technical publications (except for the Qwest technical publication addressing central office alarming).[170] Qwest agreed to change the earthquake ratings language of Section 8.2.1.17 to apply a specific standard, NEBS –BR GR-63-CORE, and to post each wire center's earthquake rating on its IRRG website. Qwest changed the 8.2.2.5 reference to address the NEBs and parity issues.[171] Qwest also changed Section 8.2.3.9 to address the NEBS issue.[172] Qwest made similar changes in Section 8.2.3.12.[173] Therefore, this issue can be considered closed.

15. Deadline for Providing CLECs Certain Collocation Information

AT&T wanted to add to SGAT Section 8.2.1.9 a 10 calendar-day time limit for Qwest responses to CLEC requests for information about collocation space.[174] Qwest agreed to this change.[175] Therefore, this issue can be considered closed.

16. Including Power Availability Information in Space Availability Reports

Jato asked that power availability information be included in the Space Availability reports, in order to allow CLECs to avoid delays by having to submit applications before learning that power constraints exist.[176] Qwest objected to the provision of such information, because changing power demands would make the information unreliable essentially immediately upon its issuance. Qwest also cited its space forecasting and reservation provisions as a better means for assuring the power availability.[177] However, Qwest's frozen SGAT filing does provide for the provision of power availability in Section 8.2.1.9:

e) whether sufficient power is available to meet the specific CLEC request;

The participants did not brief this issue; Qwest's SGAT change appears to provide what Jato sought. Therefore, this issue can be considered closed.

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[170] Bumgarner Rebuttal at page 21.

[171] Bumgarner Rebuttal at page 33.

[172] Bumgarner Rebuttal at page 37.

[173] Bumgarner Rebuttal at page 39.

[174] Wilson Direct at ¶ 190.

[175] Bumgarner Rebuttal at page 21.

[176] Christopher Murphy Testimony for the First Workshop in Utah PSC Docket No. 00-049-08 (Murphy Direct), at page 6.

[177] Bumgarner Rebuttal at page 21.

17. Expansions of Space Available for Collocation

AT&T wanted to incorporate into SGAT Section 8.2.1.10 a provision requiring Qwest to: (a) provide CLECs with expansion space that is contiguous to existing space where possible, and (b) consider CLEC needs in Qwest's facility-expansion planning. AT&T cited 47 CFR §§ 51.323(f)(2) and 51.323(f)(3) as supporting the inclusion of these provisions.[178] McLeodUSA argued that Qwest should not merely have to take into account projected needs, but also to "take steps to accommodate" them.[179]

Jato offered a clarifying amendment to this SGAT section; it would change the phrase "bay at a time" to "single bay increments." The amendment would make it clear that CLECs need to submit a separate order for each bay.[180]

Qwest agreed to these modifications, with the exception of the McLeodUSA comment about accommodation of CLEC expansion needs. Qwest said that its phrasing was taken directly from the FCC rules and that its forecasting and space reservation provisions would provide for adequate CLEC input into planning for future space requirements.[181]

McLeodUSA filed no brief in this workshop. Qwest's language reflects FCC requirements and it provides in essence for all the level of "accommodation" that is realistic, given that the issue to be taken account of is forecasted demand, not assured demand. Therefore, this issue can be considered closed.

18. Tours of Space-Limited Collocation Premises

AT&T sought a change to SGAT Section 8.2.1.11, which would clarify that the 10-day limit on scheduling premise visits should run from CLEC receipt of a Qwest denial of collocation for space reasons.[182] Qwest agreed to a change that would provide such clarification.[183] Therefore, this issue can be considered closed.

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[178] Wilson Direct at ¶ 191.

[179] Exhibit WS1-MCL-SAJ-4.

[180] Newell Direct at page 4.

[181] Bumgarner Rebuttal at page 22.

[182] Wilson Direct at ¶ 192.

[183] Bumgarner Rebuttal at page 23.

19. Providing Floor Plans for Space-Limited Premises

AT&T sought a clarifying, technical change to the language of Section 8.2.1.12.[184] Qwest agreed to make it.[185] Therefore, this issue can be considered closed.

20. Listing of Space-Limited Premises

McLeodUSA asked that Qwest also be required to make notification when added collocation space becomes available.[186] Qwest agreed.[187] Therefore, this issue can be considered closed.

21. Reclamation of Space to Use for Collocation

As it relates to making space available in premises that are full, AT&T asserted that SGAT Section 8.2.1.14 needed to be changed to bring it into conformity with 47 CFR §§ 51.321(i) and 51.323(f)(5) by:[188]

> Reducing from 60 to 30 days the time within which Qwest must provide space reclamation price quotes
>
> Requiring Qwest on request to remove obsolete, unused equipment
>
> Requiring Qwest to relinquish space held for future use before denying virtual collocation, where such collocation is feasible.

McLeodUSA argued that Qwest should pay for space renovation; otherwise CLECs would be obliged to bear the consequences of Qwest's failure to manage space effectively.[189]

Jato argued that CLECs should not have to pay for the reclamation of collocation space that must be made available to CLECs for collocation in cases where that space is being occupied by unused, obsolete equipment, or is otherwise not being legitimately used by Qwest. Jato also said the removal of unused, obsolete equipment is good business practice, and should be paid for by Qwest in the pursuit of such practice. Relying upon an analogy with TELRIC principles, Jato argued that an efficient operator would not have such equipment taking up space in the first

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[184] Wilson Direct at ¶ 193.

[185] Bumgarner Rebuttal at page 24.

[186] Exhibit WS1-MCL-SAJ-4.

[187] Bumgarner Rebuttal at page 25.

[188] Wilson Direct at ¶ 195.

[189] Exhibit WS1-MCL-SAJ-4.

place.[190] Jato asked for the establishment of flat rates to replace Qwest's ICB pricing, and requested the elimination of the separate interval for providing a price quote for reclamation.[191]

Qwest agreed to bear the cost of removing obsolete, unused equipment, provided that CLECs would be required to bear any additional costs that would arise in cases where CLECs seek to expedite such removal. Qwest also agreed to the provision addressing relinquishment of space held for future use. However, Qwest objected to the 30-day interval for providing price quotes for space reclamation. It disputed AT&T's claim that the FCC had adopted any required interval, and cited many factors and conditions that could require substantial time to examine, particularly where multiple contractors were likely to be involved in the reclamation work.[192]

Its objection to the AT&T request for a 30-day period for price quotes notwithstanding, Qwest later revised the language of Section 8, which addresses collocation, as shown in its frozen SGAT filing, in a manner that removes all reference to reclamation price quotes and that defines reclamation only in terms of the removal of Qwest equipment, which Qwest agreed to bear itself. This change and the lack of any mention of this provision in the briefs of any participant means that this issue can be considered closed.

22. Unauthorized Access

AT&T objected to the vagueness and the lack of reciprocity in SGAT Section 8.2.1.18, which makes CLEC presence outside designated areas a trespass. AT&T also wanted Qwest to be permitted to apply to CLECs security procedures no more stringent than those applicable to Qwest's own personnel.[193]

Qwest disagreed. It considered the terms "trespass" and "designated and approved areas" to be well understood. It also stated that reciprocity was unnecessary, because Qwest already was applying proper limits to the conduct of its own employees and agents, who, in addition, should have greater rights to access to Qwest premises than do CLEC personnel.[194] Nevertheless, Qwest's frozen SGAT filing reflects a change that makes Qwest personnel subject to trespass for wrongful entry into caged collocation areas. This compromise and the lack of objection to it by AT&T at the workshops or in briefs indicate that this issue can be considered closed.

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[190] Newell Direct at pages 4 and 5.

[191] Newell Direct at page 6.

[192] Bumgarner Rebuttal at page 26.

[193] Wilson Direct at ¶ ¶198 and 199, citing the FCC Collocation Order at ¶ 47.

[194] Bumgarner Rebuttal at page 28.

23. Facility Access

AT&T wanted SGAT Section 8.2.1.19 to be modified to make it clear that CLECs are entitled to unescorted access to basic facilities, which should include parking.[195] Jato also requested that parking be provided.[196] Qwest changed the section to address this issue.[197] Therefore, this issue can be considered closed.

24. CLEC to CLEC Interconnection

WCOM's requested that direct connection be allowed among collocated CLECs, as did Rhythms.[198] NEXTLINK testified that recent Qwest pronouncements have created uncertainty as to whether Qwest would permit CLECs collocated at the same Qwest premises in Utah to directly connect equipment between them. NEXTLINK said that such connections were important in allowing CLECs to avoid more expensive ways of interconnecting their networks and to permit a CLEC collocated in a number of Qwest premises to provide transport service for other CLECs in a more efficient manner.[199] Qwest agreed, but was not willing to provide interconnection, absent the use of the BFR process, except by the use of fiber, coaxial, or copper cable. The changes are reflected in SGAT Section 8.2.1.23.[200] The lack of objection to or briefing on this change indicates that the issue can be considered closed.

25. Direct Connections

AT&T objected to and sought the elimination of the SGAT Section 8.2.1.25 and Section 8.2.1.26 "without direct access to the COSMIC or MDF" clause. AT&T also believed that the reference to the BFR process should be removed, because Qwest has agreed to standard methods for direct connection to most types of Qwest cross connect frames and other equipment.[201] Jato also sought the ability to make direct connections without first having to use the BFR process.[202]

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[195] Wilson Direct at ¶ 200.

[196] Newell Direct at page 7.

[197] Bumgarner Rebuttal at page 28.

[198] Rhythms Comments at page 9.

[199] LaFrance Direct at page 15.

[200] Bumgarner Rebuttal at page 29.

[201] Wilson Direct at ¶ 202.

[202] Newell Direct at page 7.

Qwest agreed to make changes that were successful in resolving the issue in workshops in another state.[203] The lack of objection to or briefing on the language here indicates that the issue can be considered closed.

26. Converting from Virtual to Cageless Collocation

AT&T argued for a modification to SGAT Section 8.2.1.27 to allow simple conversions from virtual collocation to cageless collocation, which AT&T argued could be accomplished in fewer than thirty days, without requiring use of the BFR process.[204] Qwest agreed to an SGAT change that would limit simple conversions to 30 days.[205] Therefore, this issue can be considered closed.

27. Subcontracting Construction

AT&T proposed adding a new SGAT Section 8.2.1.28, which would: (a) permit CLECs to subcontract collocation work, and (b) limit QWEST approval of CLEC contractors to standards that QWEST applies to its own contractors.[206] Qwest agreed to make a change to address this issue, while preserving the right, for security purposes, to standard processing of access cards and devices.[207] Qwest also agreed to an AT&T and WCOM change that would limit its review of CLEC-chosen contractors for cage construction.[208] Therefore, this issue can be considered closed.

28. Power Outages

AT&T proposed adding a new SGAT Section 8.2.1.29, which would (a) provide for advance notification of non-emergency power work, and (b) provide prompt notice of those power outage, emergency power, or alarm conditions that could affect CLEC equipment.[209] Qwest agreed to provide notice, limited in the first of the two cases to any work that might affect power supply.[210] Therefore, this issue can be considered closed.

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[203] Bumgarner Rebuttal at page 30.

[204] Wilson Direct at ¶ 203.

[205] Bumgarner Rebuttal at page31.

[206] Wilson Direct at ¶ 204.

[207] Bumgarner Rebuttal at page 21.

[208] Bumgarner Rebuttal at page 39.

[209] Wilson Direct at ¶ 204.

[210] Bumgarner Rebuttal at page 32.

29. Performance Standards for Qwest Virtual Collocation Installations

AT&T proposed to modify SGAT Section 8.2.2.1 to provide for installation, maintenance, and repair time periods and failure rates comparable to those that Qwest provides in the case of work for itself, citing 47 C.F.R. § 51.323(e) as supporting this standard.[211] McLeodUSA questioned whether Qwest could change these standards at will.[212] Qwest made a change that would provide for interval and failure-rate parity, which addressed the concerns of both AT&T and McLeodUSA.[213] Therefore, this issue can be considered closed.

30. Providing Software Options and Plug-In Information to Qwest

McLeodUSA questioned whether Qwest had a legitimate need for the software options and plug-ins for virtually collocated equipment, which SGAT Section 8.2.2.6 requires CLEC to provide.[214] Qwest responded that it needed the information in order to carry out its obligations to maintain the equipment associated with those software options and plug-ins.[215] McLeodUSA did not follow up on this answer to its question, which was responsive, nor did it file a brief on this issue. Therefore, it can be considered closed.

31. Costs for Virtual Collocation Maintenance and Repair

WCOM requested a change to limit Qwest's maintenance and repair costs to what was "reasonable" and to preclude charges resulting from Qwest's fault or negligence. McLeodUSA questioned whether SGAT Section 8.2.2.8 was written broadly enough to include the fault not just of Qwest itself, but of those acting on its behalf.[216] Qwest agreed to make changes that responded to the WCOM request.[217] The language as written is already broad enough to encompass those for whose errors or omissions Qwest is responsible at law. McLeodUSA offered no evidence or argument to support a conclusion that there are in this case any special circumstances that require this particular SGAT section to amplify what the term "Qwest" means. Therefore, this issue can be considered closed.

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[211] Wilson Direct at ¶ 205.

[212] Exhibit WS1-MCL-SAJ-4.

[213] Bumgarner Rebuttal at page 32.

[214] Exhibit WS1-MCL-SAJ-4.

[215] Bumgarner Rebuttal at page 33.

[216] Exhibit WS1-MCL-SAJ-4.

[217] Bumgarner Rebuttal at page 34.

32. Efficient Space Use

AT&T wanted to eliminate the SGAT Section 8.2.3.3 quantified limits on ancillary CLEC use of space, and to make the obligation to use space efficiently applicable also to Qwest.[218] McLeodUSA questioned why the provisions of this section were not reciprocal.[219] Jato found this section (requiring efficient use within 12 months) and Section 8.2.3.7 (requiring installation to commence within 60 days) to be contradictory. It recommended that the sections be reconciled and that CLECs be given "at least 90-120 days to install their equipment."[220] Qwest agreed to remove the section entirely, which responded to the concerns raised by all three of these participants.[221] Therefore, this issue can be considered closed.

33. Efficient Space Design

Jato testified that Qwest's right under SGAT Section 8.2.3.4 to design a CLEC's collocation space should be limited by the requirement that Qwest design the space "in the most efficient manner possible." Qwest agreed to make this change.[222] Therefore, this issue can be considered closed.

34. Leasing of Collocated Equipment

SGAT Section 8.2.3.6 cites CLEC ownership, but not leasing, of collocated equipment; AT&T wanted this section of the SGAT to acknowledge the power to lease.[223] Qwest changed the SGAT to respond to this request. [224] Therefore, this issue can be considered closed.

35. Early Access to Collocation Space

AT&T wanted to change SGAT Section 8.2.3.7 to acknowledge that collocators can install their equipment before Qwest's installation work is done, where early access will not interfere with work completion.[225] Qwest agreed to change the SGAT to allow early access.[226] Therefore, this issue can be considered closed.

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[218] Wilson Direct at ¶ 208.

[219] Exhibit WS1-MCL-SAJ-4.

[220] Newell Direct at page 8.

[221] Bumgarner Rebuttal at page 35.

[222] Bumgarner Rebuttal at page 35.

[223] Wilson Direct at ¶ 210.

[224] Bumgarner Rebuttal at page 36.

[225] Wilson Direct at ¶ 211.

[226] Bumgarner Rebuttal at page 36.

36. Halting Non-Compliant CLEC Work

McLeodUSA argued that Qwest should be held liable if it improperly halted work, and questioned whether Qwest would take similar action when it discovered that its own work was not compliant with safety requirements.[227] Jato asked for the elimination of the term "non-standard," which it considered too subjective, and for the elimination of the term "unsafe," which it viewed as redundant in light of the application of NEBS standards.[228] Qwest removed the two terms to which Jato objected and it incorporated a clause acknowledging CLEC rights to pursue objections to the state Commission or a court.[229] These changes are responsive and neither participant objected to the adequacy of the Qwest changes. Therefore, this issue can be considered closed.

37. Space Reclamation

AT&T asserted that SGAT Section 8.2.3.13 did not adequately define what the "QWEST Space Reclamation Policy" meant. AT&T also argued that the 9-foot minimum space limitation is not appropriate and should be deleted.[230] Qwest provided the policy and it changed the minimum square footage language to address AT&T's concern.[231] Therefore, this issue can be considered closed.

38. Use of Other Technologies

AT&T said that SGAT Section 8.2.4.1 should be expanded to allow wireless, microwave, and as yet undefined technology to accomplish collocation.[232] Qwest changed the SGAT to address this concern.[233] Therefore, this issue can be considered closed.

39. Fiber Entrance Facilities

AT&T asked that SGAT Section 8.2.4.3 be changed to allow for the new "express connect" option, by exempting that option from the language.[234] Qwest changed the SGAT to address this

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[227] Exhibit WS1-MCL-SAJ-4.

[228] Newell Direct at page 9.

[229] Bumgarner Rebuttal at page 37.

[230] Wilson Direct at ¶ 216, citing the FCC Order on Reconsideration at ¶ 47 and the second NOPR on collocations in half bays and racks in the Order on Reconsideration.

[231] Bumgarner Rebuttal at page 40.

[232] Wilson Direct at ¶ 217.

[233] Bumgarner Rebuttal at page 41.

[234] Wilson Direct at ¶ 219.

request and to provide a minor clarification about cross-connect fiber in Section 8.2.4.3.2.[235] Therefore, this issue can be considered closed.

40. Dual Entrance Facilities

Citing 47 C.F.R. §§ 51.323(d)(1) and (2), AT&T said that SGAT Section 8.2.4.6 should be amended to provide for interconnection points accessible by both parties, and as close as reasonably possible to Qwest premises. AT&T also wanted to change this section to require Qwest to provide at least two interconnection points in all cases where there are at least two entry points for Qwest cable facilities.[236] WCOM also testified that such dual entry should be allowed.[237] Qwest agreed, subject to space availability, as 47 C.F.R. § 51.323(d)(2) permits.[238] Therefore, this issue can be considered closed.

41. Dedicated Interoffice Transport

Jato said that the SGAT Section 8.2.4.8. language should be broadened to reflect FCC requirements.[239] Jato asked that dedicated transport should be defined and made available as:

> [Qwest] *transmission facilities dedicated to* [CLEC] *that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.*

Qwest committed to a broader change, based on discussions in the Arizona workshop, which addressed this request.[240] Therefore, this issue can be considered closed.

42. ICDF Construction Charges

Jato asked for clarification of the circumstances where Qwest could charge for new construction in connection with CLEC ICDF use.[241] Qwest's agreement to delete the section addressed this request.[242] Therefore, this issue can be considered closed.

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[235] Bumgarner Rebuttal at page 41.

[236] Wilson Direct at ¶ 221.

[237] Priday Direct at page 30.

[238] Bumgarner Direct at page 43.

[239] Newell Direct at page 10, citing CC Docket No. 96-98, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd at 15718 (1996), ¶ 440

[240] Bumgarner Rebuttal at page 44.

[241] Newell Direct at page 11.

43. Express Fiber Entrance Facilities

AT&T said that Section 8.3.1.4 should be changed to provide that the "Express Fiber Entrance Facility" does not include fiber cable, splice case, splice frame, fiber distribution panel or relay rack equipment. AT&T also believes that the reasonableness of charges per fiber pair should be considered in SGAT cost dockets.[243] Qwest agreed except for relay racks, which Qwest considered to be necessary, noting that this exception was acceptable to AT&T in the Arizona workshops.[244] The lack of further pursuit of this issue by AT&T indicates that it can be considered closed.

44. Minimum Inspector Labor Charge

WCOM objected to the 3-hour minimum set forth in SGAT Section 8.3.1.8 and 8.3.2.1, unless Qwest could justify it as applicable to work Qwest performs for itself as well. WCOM agreed that Qwest had made a satisfactory showing in this regard.[245] Therefore, this issue can be considered closed.

45. Security Charges

WCOM objected to the SGAT Section 8.3.1.12 provision allowing Qwest to charge for security cameras and other security "infrastructure."[246] Jato argued that the FCC requirement that security charges be prorated acts as a bar to Qwest's approach of using ICB pricing.[247] McLeodUSA questioned why charges for entry devices should be monthly.[248] Qwest dropped the section's last sentence, which contained the charges to which WCOM and Jato objected.[249] The issue of whether access charges should be recurring or not should be addressed in a proceeding in which there is evidence about the nature and amount of the costs involved. Therefore, this issue can be considered closed.

46. Prorating Preparation and Installation Charges; Contractor Selection

WCOM testified that the FCC requires the prorating of charges, so that CLECs pay on the basis of the space that each occupies. It wanted to change SGAT Section 8.3.3.1 to provide for

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[242] Bumgarner Rebuttal at page 44.

[243] Wilson Direct at ¶ 223.

[244] Bumgarner Rebuttal at page 46.

[245] Priday Direct at page 31.

[246] Priday Direct at page31.

[247] Newell Direct at page 12.

[248] Exhibit WS1-MCL-SAJ-4.

[249] Bumgarner Rebuttal at page 51.

TELRIC-based prices and for prorating. WCOM also wanted to add a clause allowing CLECs to choose a contractor other than a Qwest pre-approved one, subject to reasonably exercised Qwest review and approval.[250] Qwest agreed to address these concerns with changes that WCOM found acceptable in workshops in other states.[251] Therefore, this issue can be considered closed.

47. Housekeeping Charges

Jato testified that SGAT Section 8.3.3.2 appeared to oblige CLECs to pay for housekeeping services outside CLEC-leased space. Jato objected to paying for any more than a pro rata share of services related to common areas.[252] Qwest language changes during the course of workshops in other states' workshops make it clear (as shown in Qwest's frozen SGAT filing) that the charges in question are for a pro rata share of common area costs. Therefore, this issue can be considered closed.

48. CLEC Order Changes; Impact on Intervals

AT&T argued that SGAT Section 8.4.1.2 improperly applied charges to all changes. AT&T said that minor changes in collocation orders (e.g., changing the number of standard electrical outlets) should not cause added fees and delays under Section 8.4.1.2.[253] Qwest testified that it would not accept the requested change, but its frozen SGAT filing reflects a change of position. The section now limits the changes that require a new application to "material" ones. The section provides a definition of "material" and it provides a mechanism for dealing with changes that do fit the definition.[254] Therefore, this issue can be considered closed.

49. Space Reservation After Quote Delivery

AT&T would add to SGAT Section 8.4.3.1 a provision reserving space while a CLEC decides what to do after Qwest delivers a quote. [255] Qwest changed the SGAT to provide for such reservation.[256] Therefore, this issue can be considered closed.

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[250] Priday Direct at page32.

[251] Bumgarner Rebuttal at page 51.

[252] Newell Direct at page 12.

[253] Wilson Direct at ¶ 228.

[254] Bumgarner Rebuttal at page 53.

[255] Wilson Direct at ¶ 230, citing the FCC's Order on Reconsideration at ¶¶ 28 and 36 and 47 CFR § 51323.

[256] Bumgarner Rebuttal at page 54.

50. Timing Between Collocation Completion and Transport Orders

Jato objected to the SGAT Section 8.5.1.1 ban on CLEC initiation of transport and ancillary service orders until after collocation construction completion and payment of outstanding non-recurring charge balances. Jato requested a provision requiring Qwest to provide to CLECs the information needed to order transport not later than 30 days before the completion of collocation construction.[257] NEXTLINK said that Qwest has refused to allow it to submit orders for transport and other facilities accessed via collocation until the collocation has been completed, thus delaying NEXTLINK's ability to make use of collocation space for which it has to pay Qwest. NEXTLINK asked that the Utah Commission require Qwest to permit orders for such facilities prior to the completion of collocation construction and to coordinate the provisioning of those facilities and the collocation space. NEXTLINK also asked that Qwest be required to inform CLECs immediately of any anticipated delay in provisioning the collocation space or related facilities.[258]

Qwest testified that it was unwilling to provide such other services before receiving full payment for collocation.[259] This response did not address the precise concern, which was not the initiation of actual services but the ability to submit orders for them. Qwest subsequently changed this section, as reflected in its frozen SGAT filing, in a manner that would allow for transport to be activated at the same time that collocation is completed. This change was responsive to the NEXTLINK and Jato request. Neither CLEC briefed this issue. Therefore, this issue can be considered closed.

51. Determining When Virtual Collocation Is Complete

Jato said that connectivity and technical-parameters testing should be finished before virtual collocation can be considered complete under SGAT Section 8.5.2.1. Jato also argued that testing should not require a separate charge.[260] Qwest's frozen SGAT does reflect a redefinition of collocation completeness, requiring the premises to be ready for service. Qwest also noted that the testing it does in virtual collocation is the same kind of testing that CLECs would do for themselves and at their own expense in physical collocation; therefore, Qwest should get payment for such service provided.[261] This issue can be considered closed.

52. Virtual Collocation Failure Notices and Repairs

AT&T sought to change SGAT Section 8.6.1.3 in order to provide for prompt Qwest notification of failures of virtually collocated CLEC equipment, and to require Qwest to make repairs at

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[257] Newell Direct at page 15.

[258] LaFrance Direct at page 13.

[259] Bumgarner Rebuttal at page 58.

[260] Newell Direct at page 14.

[261] Bumgarner Rebuttal at page 59.

intervals and with failure rates not greater than those applicable to Qwest's own equipment.[262] Qwest changed the SGAT to address this request.[263] Therefore, this issue can be considered closed.

53. ICDF Repair

AT&T asserted that SGAT Section 8.6.3.1 should not put all ICDF maintenance responsibility on CLECs. Qwest should have the responsibility on the "horizontal" side.[264] Qwest changed the SGAT to respond to this concern.[265] Therefore, this issue can be considered closed.

54. Minimum Blocks for Termination Orders

Jato testified that Qwest required it to order DS1 terminations in blocks of 28, while other ILECs permit the ordering of individual DS1 terminations. Jato asked for the addition of an SGAT provision allowing orders for individual terminations.[266] Qwest testified that the SGAT does allow DS1 services to be ordered and activated one-at-a-time.[267] Therefore, this issue can be considered closed.

Issues Deferred or Addressed Elsewhere - Collocation

1. Reciprocal Compensation for Collocation Facilities Used for Interconnection

NEXTLINK argued that Qwest unduly limited the nature of the facilities that it would subject to reciprocal compensation for the transport and termination of the traffic of interconnected carriers.[268] NEXTLINK said that, where it uses collocation in part to provide for interconnection, the portion of the collocated facilities that are used for interconnection should be subject to reciprocal compensation. This issue is addressed in the report section addressing Reciprocal Compensation, under the issue heading of *Including Collocation Costs in Reciprocal Compensation*.

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[262] Wilson Direct at ¶ 232.

[263] Bumgarner Rebuttal at page 59.

[264] Wilson Direct at ¶ 234.

[265] Bumgarner Rebuttal at page 59.

[266] Newell Direct at page 15.

[267] Bumgarner Rebuttal at page 47.

[268] Response Testimony of David LaFrance on Behalf of NEXTLINK Utah, Inc., September 5, 2000 (LaFrance Direct), at page 9.

2. Collocation Costs

NEXTLINK objected to the high cost of collocation in Utah, arguing that it pays Qwest on average over $175,000 per office, or over twice what Qwest says are its average costs.[269] These amounts have been paid under charges that are subject to true up, after the Utah Commission sets permanent prices. NEXTLINK argued that Qwest should not be deemed to be in compliance with the collocation checklist item until the commission sets those permanent prices. The Utah Commission should address this in cost proceedings.

3. Lack of Available Facilities

NEXTLINK testified that it has often experienced collocation delays because of a lack of facilities, particularly access to DC power. NEXTLINK said that it has had to pay for other collocation facilities while it awaits power augmentation.[270] This issue was addressed in the **Common Issues** section of this report, under the issue heading of Lack of Available facilities.

4. APOTS-CFA Information

Rhythms requested the establishment of a firm interval for providing APOT-CFA information, which lets a CLEC know where on the Qwest frame its cable has been assigned. Rhythms concern was that this information be provided promptly, because it is necessary prior to order placement. There was a discussion of adding to SGAT Section 4 APOT-CFA information as a ready for service criterion. It was agreed, but the relevant section was not included in Qwest's frozen SGAT language for this workshop. Therefore, Rhythms may address this issue in the upcoming SGAT General Terms and Conditions workshop if it does not consider the issue closed.

Issues Remaining in Dispute – Collocation

1. "Product" Approach to Collocation

AT&T noted that the SGAT provided for eight standard collocation types, and required the use of the BFR process before new collocation types would be available.[271] AT&T raised two concerns with this approach:

> Excessive delays in securing new or currently non-standard collocation through the BFR process
>
> Establishment of changing collocation conditions through application of Qwest documents external to the SGAT.

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[269] LaFrance Direct at page 12.

[270] LaFrance Direct at page 12.

[271] AT&T Brief at pages 45 and 46.

AT&T's brief cited a number of instances where it said that CLECs were forced to agree in advance (i.e., before they could secure collocation) to other requirements that were inconsistent with interconnection agreements or the SGAT, which requirements came from Qwest policy and other documents.[272] AT&T argued that the application of such collateral and inconsistent requirements reflected what it called an attempt by Qwest to "productize" the services that it provides to CLECs.

AT&T wanted to solve the first problem by obviating the need for the BFR process for any new type of collocation that Qwest makes available. It wanted to solve the second problem by withholding a certification of Qwest compliance with the Section 271 checklist until its collocation policies and performance requirements could be shown to be in compliance with its SGAT and interconnection requirements.[273]

Qwest argued (as to the first AT&T concern) that it should have the right, as a simple matter of contract law, to require CLEC consent to all the terms and conditions of any new product or service offering before being obliged to make that offering available. Qwest also said that it does permit CLECs to opt into any new product and service offerings without requiring the prior execution of the agreement under which the CLEC's relationship with Qwest is governed.[274]

Proposed Issue Resolution: The characterization of the issue as "productization" is not helpful in resolving the dispute that exists here. The dimensions of that term are hazy at best. The issue is not whether Qwest gives something the attributes of a product (assuming that there would even be agreement on what those are). The issues instead are:

> Whether Qwest has placed unreasonable terms, conditions, or limits on the availability of collocation
>
> If it has, what is to be done about it.

As to the concern about new a new form of collocation, it is clear that what it will be, of what it will consist, what its unique circumstances and requirements are, and whether it will impose costs that are unique cannot be determined now. Otherwise, either Qwest or the CLECs could make specific proposals for dealing with it at this time. Neither has; in fact, by definition, neither can. Therefore, there must be some method for establishing terms and conditions at such time as the circumstances underlying them are known and have been subject to negotiation among the carriers and, if necessary, to arbitration or other resolution by the state commissions.

There is no basis for declaring now that new forms of collocation must be available under the same terms and conditions as apply to known forms. The BFR process may take time to resolve any disagreements, but its usefulness in this context is no less than its usefulness to other, presently unknown circumstances. To the extent that the BFR process may require streamlining,

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[272] AT&T Brief at pages 47 and 48.

[273] AT&T Brief at pages 47 and 50.

[274] Qwest Brief at pages 26 through 28.

the reasons therefore cannot be limited to collocation. The participants will have an opportunity to address any structural or procedural concerns about the BFR process in the upcoming workshop on general SGAT terms and conditions. That is the proper place to address whether the design of the process is appropriate to meeting all the needs for which it is intended, of which collocation is only one.

That Qwest agrees to make any new offerings available immediately does help to minimize delays. However, it must also be recognized that such offerings will be subjected to after-the-fact analysis by and negotiation with the CLECs. There may even ensue commission resolution of any disputes that survive such negotiation. It should be clear that CLEC agreement to the terms and conditions of any new offering does not foreclose appropriate retroactive changes to reflect the terms and conditions ultimately agreed to in negotiations or ordered by regulatory authorities. Otherwise, CLECs will be on the horns of a dilemma, which is to decline to take service until all disputes are ultimately resolved, or to commit now and perhaps for the long term to provisions that will change after regulatory intervention. There have been other cases where Qwest has asked for a continuation of existing arrangements even after public policy changes make such arrangements impermissible on a forward-looking basis. This should clearly not be such a case. Therefore, Qwest should add the following sentence to the end of SGAT Section 8.1.1:

> *Other types of collocation may be requested through the BFR process. In addition, where Qwest may offer a new form of collocation, CLEC may order that form as soon as it becomes available and under the terms and conditions pursuant to which Qwest offers it. The terms and conditions of any such offering by Qwest shall conform as nearly as circumstances allow to the terms and conditions of this SGAT. Nothing in this SGAT shall be construed as limiting the ability to retroactively apply any changes to such terms and conditions as may be negotiated by the parties or ordered by the state commission or any other competent authority.*

The second aspect of this issue, applying to collocation the contents of external Qwest documents that are not consistent with the SGAT, also has implications not just, or even particularly, relevant in the case of collocation. Qwest conceded at the workshops the need for such documents to be consistent with the SGAT. It also conceded that the SGAT should control in the event of any disagreement. Thus, the major problem to resolve here is essentially one of how to apply this concept, on which there was no evident disagreement.

The solution of waiting until every Qwest technical and other parallel document affirmatively agree with every aspect of the SGAT is not functional. Nobody argued with the need for underlying standards and procedural documentation; nobody argued that the SGAT should itself be such a document. The workshop record is replete with references to many technical documents. We also know that OSS interfaces will require an extensive knowledge of particulars and the use of forms or screens for activities such as pre-ordering, ordering, maintenance, repair, and billing.

Accepting the need for extensive documentation, which we must, it is wholly unrealistic to expect that documentation to be perfectly consistent with the contents of the SGAT. Even were it

possible to remain current with every change in these parallel, but necessary documents, there would certainly be some provisions of them whose consistency with the SGAT would be a matter of honest dispute. Thus, to require perfect consistency as a condition of checklist compliance is tantamount to deciding that compliance will likely never happen. In addition to these concerns, it is also the case that this issue applies with equal force to the other obligations of Qwest under the SGAT; there is nothing that makes collocation unique or even particularly of concern in this regard.

Accordingly, a more practical way to address AT&T's concern about consistency, which is legitimate, must be found. Some progress in exploring the application of a general SGAT term or condition was made during the workshops. Essentially, this approach would provide explicitly for the precedence of the SGAT when any party establishes inconsistency with parallel documents. There may even be merit in addressing in a general way parallel documentation that, while consistent, imposes unnecessarily restrictive or burdensome conditions. The wisdom and the precise delineation of a general provision to address the questions of inconsistency and undue burden remain to be seen. However, the upcoming session on general SGAT terms and conditions will provide an adequate forum for addressing them. There is no reason to deal with them in the specific context of collocation.

2. Adjacent Collocation Availability

McLeodUSA argued that the adjacent collocation option should not be limited to situations where space has been exhausted. [275] Qwest objected, on the grounds that the FCC has specifically declined to require adjacent collocation where there remains collocation space in an existing structure.[276]

Proposed Issue Resolution: McLeodUSA made no response to the Qwest argument, provided no testimony in support of the need for adjacent collocation where existing space is available, and filed no brief on this (or any other) issue in this workshop. In the absence of any showing at all of the need for requiring adjacent collocation where space is available, there should be no requirement to include such availability in the SGAT.

3. Precluding Virtual Collocation at Remote and Adjacent Premises

AT&T's brief objected to virtual collocation restrictions under SGAT Section 8.1.1.8, 8.2.7, 8.2.7.2, 8.4.6.1, and 8.6.5.1. AT&T began by observing that the manner in which SGAT Section 4.50(a) defines remote premises for purposes of collocation allows only physical collocation at remote premises. AT&T went on to argue that the FCC does not distinguish between remote and other premises, for purposes of when virtual collocation is to be required, instead requiring at 47 C.F.R. 51.323(a) that physical and virtual collocation be required.[277] AT&T also cited the UNE

[275] Exhibit WS1-MCL-SAJ-4.

[276] Bumgarner Rebuttal at page 17.

[277] AT&T Brief at pages 38 and 39.

Remand Order as specifically allowing virtual collocation at two locations that Qwest defines as "remote premises," i.e., cabinets and vaults.[278]

AT&T stated that virtual collocation is necessary in remote locations because those locations will often have space constraints that preclude physical collocation. Qwest's argument against allowing virtual collocation at remote premises springs from this very same factual observation. Qwest said that it would not require physical separation of its equipment in remote premises. In that case, according to Qwest, if there is no room for physical collocation, even absent such segregation, then there cannot "by definition" be any space for virtual collocation. Qwest said that its offer of adjacent remote collocation under SGAT Sections 8.4.6.1 and 8.4.6.2 adequately addressed situations where space limitations may preclude physical and virtual collocation at remote premises. [279] Qwest quoted a recent FCC order addressing space limitations at remote premises:[280]

> *We note that configuration of remote terminals may make it impossible for the incumbent to place collocators in separate space isolated from the incumbent's own equipment"*

Qwest described its view of the underlying motive for this dispute in a footnote in its brief.[281] That footnote stated that the objective underlying AT&T's argument was to shift responsibility to Qwest for equipment installation and maintenance of its equipment at remote terminals, given that these are ILEC responsibilities in the event of virtual collocation. Qwest argued that it would be "simply unfair and unrealistic" to expect it to staff, and train sufficient personnel to perform this role.

Proposed Issue Resolution: Section 251(c) of the Act sets forth an obligation to provide physical collocation. It goes on to state that virtual collocation is an option where technical reasons or space limitations make physical collocation "not practical."

Qwest has cited no evidence in the record to support a claim that a lack of space for physical collocation, even without physical separation of the Qwest and CLEC facilities, necessarily precludes every conceivable form of virtual collocation.[282] Moreover, the FCC language on which it relies only supports the conclusion that space for physical (not virtual) collocation may

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[278] AT&T Brief at page 40, citing *UNE Remand Order* ¶ 221.

[279] Qwest Brief at page 36.

[280] *Order on Reconsideration* at ¶107 (*Second Further Notice of Proposed Rulemaking* in CC Docket No. 98-147).

[281] Qwest Brief at page 38, fn 95.

[282] Qwest did cite in its brief, at page 38, fn 94, to a transcript from workshops in another state, but neither the transcript nor any quotations from that transcript were included in its brief. This reference does not provide substantial evidence to support Qwest's claim, particularly where, as here, even if it did, it might make granting AT&T's a nullity, but in no case a harm in practical terms.

not be available at remote premises. If Qwest is right that virtual collocation is not possible in these circumstances, then it will not have to provide it, for the very reason that it is impossible. If Qwest is incorrect, then virtual collocation is not only possible, but the FCC requires it.

Qwest's claim that AT&T's real intent was to transfer massive installation and maintenance responsibilities to Qwest is curious, in light of Qwest's claim that virtual collocation is not physically possible where physical collocation is not possible. It is difficult to imagine large resource requirements for something that will not be possible. Under Qwest's view of the physical circumstances involved, it is difficult to envision any amount of equipment being virtually located remotely, let alone enough of it to alter Qwest's resource needs substantially.[283] Moreover, should Qwest be required to install and maintain equipment here, it may recover under already existing SGAT terms and conditions its costs for doing so, including training. To the extent that they become material, they are not grounds for denying collocation in any event. At most, and this point is hypothetical at present, they may provide a basis for relief, should Qwest be able to demonstrate the need for it, from the collocation intervals otherwise required.

Therefore, in order to satisfy its obligations to provide collocation, Qwest should change its SGAT in order to assure that virtual collocation in remote locations is not precluded or limited to any greater extent in remote premises than it is at wire centers. The absence of SGAT Section 4.50(a) from the record in this workshop precludes a specific language recommendation here. The participants should therefore include provisions that will accomplish this purpose in their comments on this report to the seven participating commissions.

4. Cross Connections at Multi-Tenant Environments

AT&T argued that SGAT Section 8.1.1.8.1 placed inappropriate restrictions on access to the Network Interface Device (NID) in multi-tenant locations (MTEs). AT&T's concern came in the context of making cross connections between its NID and Qwest's NID (as AT&T defined them) where they are commonly placed in locations that contain multiple end-users. AT&T believed that Qwest's SGAT, by imposing collocation obligations in such cases, would deprive it of the right that the FCC has given a CLEC to "connect its loops, via its own NID, to the incumbent LEC's NID."[284]

Qwest's brief noted that it considered the issue to be resolved on the basis of its agreement not to require collocation "in MTE terminals located in or attached to customer-owned buildings where no electronic equipment, power or heat dissipation is required."[285]

Proposed Issue Resolution: Much of the debate about this issue appeared to presume that resolution should depend on whether:

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[283] Parenthetically, it should also be noted that Qwest has not cited any evidence of record regarding even the existence of these burdens, let alone their magnitude.

[284] AT&T Brief at page 42, citing the *UNE Remand Order* at ¶¶ 230 and 233.

[285] Qwest Brief at page 29.

> Such cross connections were occurring at what was or was not properly definable as the "NID"
>
> Such cross connections did or did not require "collocation"
>
> Qwest did or did not own the wiring between the point of cross connection and customer end-use equipment.

To a large extent, these categorizations missed the real point involved, which is the identification of reasonable limits and protections on CLEC access to Qwest equipment that commonly serves more customers than the one(s) a CLEC will serve. On the one hand, deciding that such cross connections were defined as occurring at the NID would not, AT&T claims notwithstanding, mean that Qwest could impose no constraints, however necessary they might be to assure no disruption of service to other customers. On the other hand, deciding that such cross connections must fall under the definition of collocation would not mean necessarily that the much longer standard intervals, which should be set with reference to much greater levels of required work, should necessarily apply. In other words, if the cross connection is at the NID, reasonable protections can apply; likewise, if the cross connection is collocation, intervals set with reference to the particular requirements of this case can be established under authority that the FCC clearly allows state commissions to exercise.

Ultimately, Qwest was making a distinction between enclosed versus non-enclosed equipment located within the structures in or on MTE buildings. Only in the former case was Qwest arguing that collocation requirements should apply. It later also became clear that, from safety, reliability, and operational perspectives, such a distinction had no practical foundation. At that point it became clear, as Qwest has confirmed in its brief, that no such requirements should apply in either case, provided that the locations in question were in or attached to customer-owned buildings. The workshop discussion also addressed remote terminals serving MTEs, but located remotely from customer-owned buildings. Nothing in the record contravenes Qwest's evidence that there are valid concerns about such "detached" terminals.

Therefore, Qwest's proposal, as set forth in its brief provides a sound solution to the general question of the non-application of collocation requirements to MTE terminals. It is not necessary to add AT&T's proposed amendment to Section 8.1.1.8.1. It is, however, appropriate to note that this SGAT section subjects to the provisions of Section 9.3 all CLEC connections at MTEs (which presumably means connection not only in or on customer-owned buildings, but in the free-standing remote terminals that Qwest distinguishes as well). The reasonableness of that section will be addressed in a subsequent report. Therefore, the recommended resolution here should not be read as implicitly deciding now that all of the conditions and limitations there are necessary and appropriate, as Qwest has proposed them.5. Listing of Space-Exhausted Facilities

AT&T cited two problems with the Qwest web site, mentioned in SGAT Section 8.2.1.13, by which Qwest notifies CLECs that certain premises do not have remaining collocation space:

> The list includes only wire centers; it should be expanded to include all other potential collocation premises

> The list typically includes only locations where CLECs have asked about space; it should include all premises where collocation is permitted, not only those about which Qwest has received CLEC inquiries.[286]

Qwest testified that a listing of all "premises" as AT&T wanted them to be defined would require Qwest to undertake an unreasonable burden of inventorying the "thousands and thousands" of places where a CLEC might request collocation, including cable vaults, pedestals, and any other "structure" located on public rights-of-way. Qwest asserted that the FCC's discussion of a publicly available report about space availability, which Qwest's web site provides, uses language that supports a more limited report, inasmuch as it uses the term "office" interchangeably with the term "premises." Qwest also cited the FCC requirement for an on-request space availability report as already giving a means for CLECs to ask about space at specific premises.[287]

AT&T's brief argued that Qwest may not limit the information only to wire centers, let alone further limit it to wire centers that Qwest discovers to be full only as a result of providing a CLEC-requested space availability report for a particular wire center. AT&T cited 47 C.F.R. § 51.321(h), the FCC rule that AT&T believes to require the broadly scoped report that it asked for in its testimony:[288]

> *The incumbent LEC must maintain a publicly available document, posted for viewing on the incumbent LEC's publicly available Internet site, indicating all premises that are full, and must update such a document within ten days of the date at which a premises runs out of physical collocation space.*

AT&T considered this language to be clear on its face, but offered a lesser standard for inclusion in the web site's list of premises, which would consist of:[289]

> All wire centers that are full
>
> A list of other premises where Qwest has prepared a space-availability report at the request of an individual CLEC.

Qwest's brief argued that it has no duty to inventory even wire centers, absent a specific CLEC request. Qwest said that 47 C.F.R. § 51.321(h), when read as an integrated whole, makes it clear that FCC intended the web site requirement to consist essentially of a compilation of information gleaned through Qwest responses to such CLEC requests. Qwest concluded by saying that its willingness to include in its web site those locations where it learns through three sources (a

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[286] Wilson Direct at ¶ 194.

[287] Bumgarner Rebuttal at pages 24 and 25, citing CC Docket no. 98-147, *Advanced Services Order*, released March 31, 1998, at ¶¶ 59 1nd 147 and fn 143..

[288] AT&T Brief at pages 59 and 60.

[289] AT&T Brief at page 61.

collocation application, a collocation reservation, or a space availability report) that space is limited meets the only logical construction of the FCC's requirements.[290]

Proposed Issue Resolution: Qwest's proposal contorts the clear intent of 47 C.F.R. § 51.321(h) in arguing that it must only report on premises that it discovers to be space constrained as a result of fulfilling CLEC space availability requests. It is obvious that Qwest has an independent duty to investigate; it could not possibly meet the burden to post notice within 10 days after premises become full if its only information for doing so came from CLEC requests, which will not generally coincide with the time when premises become full. Thus, Qwest's SGAT language unduly constricts the information that it is obliged to provide.

At the same time, however, the FCC's use of the term "premises," which has for other purposes the very broad definition that AT&T asserts, is unfortunate. It is not reasonable to impose on Qwest the obligation to investigate every single place in its network where collocation could take place, and, moreover, to do it at not greater than 10-day intervals, in order to keep its web site current. It can safely be assumed that many of the thousands of places that constitute "premises" for collocation purposes will never be of interest to CLECs. The FCC's language should be interpreted with reference to the goal it seeks to achieve in connection with the burden involved in achieving it.

When one considers the gross mismatch between resource expenditure and benefits to be obtained, it becomes clear that the FCC had in mind a different use of the term "premises" in the context that is relevant here. AT&T appears to recognize this in offering to limit the independent Qwest duty to investigate and report to wire centers. Its proposal embodies a definition of premises that, for the purposes of SGAT Section 8.2.1.13, will meet the goal sought by the FCC in a way that responds appropriately to the practical limits involved. Therefore, Qwest should be required to add the following sentence to the end of this SGAT Section:

> *Notwithstanding the foregoing, the Qwest web site will list and update within the 10-day period all wire centers that are full, whether or not there has been a CLEC requested Space Availability Report.*

6. ICB Pricing for Adjacent and Remote Collocation

Qwest proposed that adjacent and remote collocation be priced on an individual case basis under SGAT Section 8.3.5 and 8.3.6. Qwest reasoned that its complete lack of experience in offering such forms of collocation necessarily precluded the development of standard prices. Qwest noted that adjacent collocation could require new construction in widely varying and unpredictable circumstances.[291]

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[290] Qwest Brief at pages 30 through 32.

[291] Qwest Brief at page 32.

AT&T argued that Qwest should be required to develop a standard list of adjacent and remote collocation offerings, which should, where possible, incorporate rate elements. AT&T expressed concern that the increasing frequency it expected for such forms of collocation would produce opportunities for delay and unjust pricing. AT&T asked at a minimum that the issues of standard offerings be deferred to a cost proceeding, in which the participants could present proposals for standardizing prices.[292]

Qwest observed that, while CLECs had argued for at least some rate elements to be standardized, they did not specify which ones; moreover, some of the elements that Qwest considered in the context of standardization, such as power cables for example, were also subject to different considerations when run in locations outside of the more predictable central-office situations.[293]

Proposed Issue Resolution: Both sides presented credible defenses of their positions on this matter. The two material conclusions that the record before us supports are these:

> There is no evidence of record whatsoever about what identifiable forms of standard adjacent and remote collocation **will** cost
>
> There is a material possibility but not a certainty that there is no reliable way to determine what unprecedented (for Qwest) forms of collocation **may** cost.

Thus, this proceeding cannot identify and price any standard forms of adjacent and remote collocation. However, neither should it conclude that there is no way to price such standard forms except under the SGAT's ICB approach. Therefore, the SGAT should leave open the possibility for the development of standard prices, but it should not be criticized, in terms of Section 271 compliance, for failing to do so at present.

Therefore, to Sections 8.3.5.1 and 8.3.6 there should be added after the phrase "developed on an individual case basis" the phrase, "except where the commission finds that standard pricing elements can be reasonably identified and their costs determined".

7. Conversion of Collocation Type – Payment of Costs

Jato asked for the elimination of ICB pricing for collocation-type conversions and it specifically objected to having to pay for the elimination of SPOT frames, which it said came into existence only as a result of an inefficient and anticompetitive Qwest policy in the first place.[294] Qwest objected to eliminate provisions for recovering its costs.[295]

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[292] AT&T Brief at page 63.

[293] Qwest Brief at page 33.

[294] Newell Direct at page 8.

[295] Bumgarner Rebuttal at page 31.

Proposed Issue Resolution: Neither Jato or Qwest briefed this issue. Jato also did not present evidence or argument to support a claim that prices are sufficiently predictable to be set in advance. In the absence of evidence, there is no basis for concluding that it is unreasonable to require individually determined prices. Moreover, to the extent that experience demonstrates that certain conversion types have predictable prices, the BFR process can be used to set them and to avoid the need for using them again in the same circumstances.

Jato also did not present evidence to support a claim that the prior use of SPOT frames was so wholly inappropriate as to justify the remedy of requiring Qwest to convert them at the unilateral request of CLECs and without cost. Therefore, its recommendation to eliminate provisions allowing Qwest to recover costs for the elimination of SPOT frames should not be accepted.

8. Recovery of Qwest Training Costs

WCOM testified that SGAT Section 8.2.2.7, which allows Qwest to recover the costs of training its employees responsible for installing, maintaining, and repairing virtually collocated equipment, is unreasonable and should be stricken. WCOM argued that CLECs should be able to provide the training themselves or contract with Qwest for it at "reduced rates."[296] Qwest responded by saying that it is proper for Qwest to recover the cost of training related to equipment that a CLEC collocates and that may be unfamiliar to Qwest personnel.[297] The parties did not brief this issue.

Proposed Issue Resolution: It is not reasonable for a CLEC, on the one hand, to expect Qwest to take full responsibility for installation, maintenance, and repair to the same standards that would apply if it were being used to serve Qwest end users, while, on the other hand, to deny Qwest the ability to reasonably identify and fulfill the training requirements necessary to exercise that responsibility. Qwest, not the CLEC, should have the initial responsibility to determine what training is necessary and by whom it is to be provided. Thus, obliging Qwest to accept CLEC-provided training is not reasonable. WCOM did not define what it means by "reduced rates." If the term means rates below costs, then it is evidently unreasonable. What else it may mean is not clear. Similarly, denying the right to recover legitimate travel expenses is inappropriate.

Accordingly, a significant change to this training language is not warranted. However, it is noteworthy that Section 8.2.2.8, which addresses maintenance and repair costs, explicitly limits Qwest's recovery to costs that are "reasonable." It might well be argued that such a limitation is implied even where not stated. Moreover, its use may even be problematical in that section because it might give reason to infer that other unmodified uses of the term costs allow Qwest to recover costs that are not reasonable. Nevertheless, the addition of the modifier in the section following the one at issue here suggests at least a confirmation that Qwest has an obligation to

[296] Priday Direct at page 26.

[297] Bumgarner Rebuttal at page 33.

limit its training, its direct costs, and its associated expenses to levels that it can demonstrate to be reasonable.

The issue of unintended consequences arising from a non-uniform use of modifiers such as "unreasonable" should be addressed in the upcoming session on general SGAT terms and conditions.

9. Removal of Equipment Causing Safety Hazards

SGAT Section 8.2.3.10 allows Qwest to remove or correct non-compliant equipment problems at CLEC expense, provided that it has given the CLEC a 15-day notice of Qwest's determination that such problems exist. AT&T wanted to change the section to allow no removal rights until after 30 days of negotiation, followed where necessary by state commission resolution at the request of either party. AT&T would also add a provision making Qwest liable for any equipment damage or service disruption caused by the audits pursuant to which Qwest identifies non-compliant conditions.[298]

Jato asked for the elimination of this section entirely, arguing that Qwest should not have the right to remove CLEC equipment before the state commission hears any CLEC objections.[299]

McLeodUSA raised several concerns about this section:[300]

> Lack of notice to CLECs of such audits
>
> Inability to correct within 15 days if applicable standards have changed
>
> Whether Qwest requires its own problems to be corrected within a similar time frame.

Qwest agreed to change the section to:

> Limit its scope to nonconformance with NEBS Level 1 safety standards
>
> Provide written notice detailing the requirement not met and the specific equipment involved
>
> Attest by affidavit that all Qwest equipment at the office complies with the standard at issue
>
> Acknowledge CLEC rights to pursue objections to the state Commission or a court
>
> Allow more than 15 days to correct unsafe conditions, where required.

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[298] Wilson Direct at ¶ 213.

[299] Newell Direct at page 9.

[300] Exhibit WS1-MCL-SAJ-4.

Qwest did not agree to any other changes, but noted that there was agreement by the participants in the Arizona workshop as to the sufficiency of the changes, with one exception raised by WCOM.[301]

Proposed Issue Resolution: It is reasonable to conclude that the concerns of AT&T, which did file a brief on collocation but did not raise this issue, have been adequately addressed. However, it is not clear that the concerns of the others, who did not file briefs, and whose concerns were not fully addressed by Qwest changes, are resolved.

For safety violations, it would not be appropriate to preclude Qwest actions until after a state commission has reviewed them. After the fact or contemporaneous review, which Qwest's changes allow, is logical. However, requiring safety concerns to await formal disposition in an adjudicative environment is not consistent with sound business practice.

McLeodUSA's question about CLEC notice of the audits that identify such concerns is also misplaced. Qwest's ability to observe premises where its equipment is located and where its employees are present (along with the equipment and employees of other CLECs) should not be dependent upon whether it has provide notice to CLECs.

Qwest did agree to provide specificity about the noncompliant circumstances and to provide verification that it is not imposing on CLECs a requirement that its equipment at the same locations would fail to meet. Thus, CLECs will get a specification of what problems exist and they will be entitled to assurances that Qwest is not expecting their equipment to meet higher standards than those that Qwest applies to its own equipment.

For these reasons, the CLEC-proposed conditions beyond those that Qwest has agreed to incorporate are not appropriate for inclusion in the SGAT.

10. Channel Regeneration Charges

Jato said that the FCC has ruled that charging CLECs for channel regeneration is not permitted, but must be provided at no charge when regeneration is necessary.[302] McLeodUSA questioned whether the charge applicable under SGAT Section 8.3.1.9 should be limited to cases where long distances are unavoidable, in order to preclude them when the resulting distance is merely a matter of Qwest's preference in determining locations for collocation.[303]

Qwest testified that it does provide through its EICT finished service all that the FCC requires, which is a physical collocation requirement that does not require repeaters. Qwest also provides

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[301] Bumgarner Rebuttal at page 38.

[302] Newell Direct at page 11, citing CC Docket No. 93-162**,** *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order 12 FCC Rcd 18730 (1997) at ¶ 117

[303] Exhibit WS1-MCL-SAJ-4.

as an option interconnection tie pairs, for which the signal level is not guaranteed. It is for this option that Qwest provides the opportunity to purchase regeneration. In response to McLeodUSA, Qwest said that, because CLECs have the right to request alternate collocation locations where available, the issue of location necessity/preference need not be separately addressed.[304]

AT&T argued that a forward-looking approach to collocation would have to assume no need for regeneration, which should therefore be excluded from collocation pricing. AT&T also argued that elimination of CLEC responsibility for such charges would give Qwest an incentive not to locate CLECs at inconvenient locations.[305]

Qwest noted in its brief that it has the obligation under SGAT Section 8.2.1.23 to "design and engineer the most efficient route and cable racking for the connection". Qwest also argued that, where regeneration is not avoidable, CLECs should pay its accrual costs.[306]

Proposed Issue Resolution: In the first instance, AT&T's reliance upon the forward-looking approach that the FCC takes to pricing is misplaced. It is one thing to conclude that Qwest should receive forward-looking costs for access to network elements that it has already installed. It is quite another to argue that it should expend costs for the specific purpose of allowing collocation, while expecting to recover only a portion of them. Acceptance of AT&T's forward-looking cost argument in the narrow context of channel regeneration raises vast concerns about what its limits might be. It could equally be argued that on a forward looking basis, consideration of CLEC collocation might make cage construction or power augmentation costs much less. The same argument could be made to support a claim that building new structures for adjacent collocation is not necessary.

There is no categorical difference between these examples and the instant case, which is channel regeneration. In any of them, the need for costs to be expended is that the physical configuration of the premises does not accommodate CLEC presence without the need to take steps that have costs. The FCC has correctly made actual, reasonable costs the basis for pricing collocation. Extending that concept by postulating what collocation premises would look like had all future possible CLEC needs been considered is not only highly speculative, it would also subject Qwest to a continuing and potentially vast liability to continue incurring future expenditures for which there will be less than full recovery, however reasonable the costs involved are. There should be no blanket presumption that all costs to be charged by ILECs should be based on a "least cost network configuration;" nor does a proper conception of a "forward looking environment" include the notion that an ILEC must bear responsibility for the actual and reasonable nonrecurring costs of accommodating CLEC collocation. AT&T's reliance upon these least cost

[304] Bumgarner Rebuttal at pages 46 and 47.

[305] AT&T Brief at page 62.

[306] Qwest Brief at pages 34 and 35.

and forward looking arguments is inapt in the context of collocation, where consistent practice has been to allow the actual and reasonable costs of allowing interconnection.

Nevertheless, there remains here a legitimate question about what costs are reasonable. Qwest conceded in its brief that CLECs should pay for regeneration where it is "unavoidable." The problem with the SGAT is that it does not limit payment to where regeneration is truly unavoidable. Qwest cited the right of CLECs to request alternate collocation locations, but did not explicitly provide the criteria for deciding whether to grant such a request. Qwest also cited the obligation to route connections reasonably, but did not address at least one relevant case; i.e., if a particular collocation location requires regeneration even with efficient routing, but an alternate collocation would not, what cost responsibility for regeneration would exist.

Qwest should not have the power to charge for regeneration where there exists another available collocation location where regeneration would not be required, unless the CLEC chooses to remain at the location where regeneration is required. Furthermore, where a CLEC wishes to make present use (without the need for regeneration) of space that Qwest has reserved for its future use, it similarly should not have to pay for regeneration because that particular location is not made available to it.

Therefore, the SGAT should incorporate the following sentence at the end of Section 8.3.1.9:

> *Channel Regeneration Charges shall not apply if Qwest fails to make available to CLEC: (a) a requested, available location at which regeneration would not be necessary or (b) collocation space that would have been available and sufficient but for its reservation for the future use of Qwest.*

11. Qwest Training Costs for Virtually Collocated Equipment

McLeodUSA questioned why the charges Qwest must incur for training under SGAT Section 8.3.2.2 should not continue to be prorated if more than one additional CLEC selects the same equipment type, and prorating should also not be on the basis of the number of equipment units of each CLEC involved.[307] Qwest responded by saying that it had agreed to reduction by half for a second CLEC, but did not address in its testimony or briefs why prorating should stop with the second CLEC.[308]

Proposed Issue Resolution: The logic of prorating extends not only to the second CLEC, which Qwest is willing to address, but also to subsequent CLECs. Qwest has cited no reasons (e.g., diminishing economic returns or administrative complexity) that would suggest otherwise. However, there is no evidence to support a conclusion that the number of equipment items that a CLEC uses makes a material difference in the Qwest training costs. The last sentence of Section 8.3.2.2 should be revised to read:

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[307] Exhibit WS1-MCL-SAJ-4.

[308] Bumgarner Rebuttal at page 51.

Where more than one CLEC in the same metropolitan area selects the same virtually collocated equipment, the training costs shall be prorated to each according to the number of CLECs so selecting.

12. Requiring SGAT Execution Before Collocation May Be Ordered

Jato objected to the SGAT Section 8.4.1.1 requirement that it first execute the SGAT, because a CLEC should, provided it agrees to pay all collocation-related charges, have the option to save start-up time by examining what legal form its relationship with Qwest will take while it establishes collocation arrangements in parallel.[309] Qwest's responsive testimony did not discuss the execution of the SGAT, which was cited in the Jato testimony, but a questionnaire referred to in SGAT Section 3.1, which Qwest has not provided in its frozen SGAT language. Note that the Section 8.4.1.1 reference to Section 3.1 has changed to a reference to Qwest's "Implementation Schedule," which Qwest has also not provided in its frozen SGAT filing. Qwest testified that the questionnaire seeks only basic CLEC identification, credit, and billing information, and its completion should not be a source of material delay. [310]

Proposed Issue Resolution: The lack of access to the relevant SGAT sections makes it difficult to resolve this issue. However, certain general conclusions can be reached. First, the provision of the kinds of information that Qwest claims the questionnaire solicits are reasonably necessary to allow for the billing and collection that Jato agrees should take place without delay. Therefore, to the extent that the questionnaire seeks only such kinds of information, there appears to be no dispute about whether and when it must be provided.

Second, to the extent that a CLEC must execute the SGAT before ordering, Qwest has made no argument supporting such a requirement. Nor is the need for any evident as a precondition to the orders that Jato discusses. The execution of a simple background questionnaire is appropriate; however, the execution of the SGAT may, as Jato suggests, require a CLEC to examine options that may take considerably more time and judgment. Given the long lead times for collocation, that examination and the ordering of collocation should be permitted to proceed in parallel, provided that Qwest is exposed to no more cost risk than would apply had the CLEC already executed the SGAT. Therefore, Qwest should, within its 10-day comment period, make a demonstration that the SGAT will not preclude collocation ordering (with reasonable cost protections for Qwest) before the SGAT has been executed.

13. Forfeiture of Collocation Space Reservation Fees

AT&T objected to the SGAT Section 8.4.1.7.4 provision that would require CLECs to forfeit the nonrecurring collocation space reservation fee upon cancellation of the reservation. AT&T argued that the lack of a corresponding risk of loss by Qwest when it reserves space for itself

[309] Newell Direct at page 12.

[310] Bumgarner Rebuttal at page 52.

violated the FCC requirement that space reservation policies apply equally as between Qwest and CLECs. AT&T also argued that the provision would provide a windfall to Qwest.[311]

Qwest responded partially to CLEC concerns about this provision. First, it reduced the deposit subject to forfeiture from 50 to 25 percent of the nonrecurring charges applicable to the space reserved. Qwest also added a new SGAT Section 8.4.1.8, which provides a lower cost way to provide some of the benefits of space reservation.[312] Qwest conceded that it does not bear the same costs when it abandons reserved space, but defended the 25 percent forfeiture on a number of grounds:[313]

> Qwest has to commit resources that involve costs to respond to reservation requests
>
> The forfeiture acts as an inducement for CLECs not to warehouse space inefficiently
>
> The forfeiture will inhibit the development of a secondary market for reserved space.

Proposed Issue Resolution: AT&T attacked the forfeiture provision on the single ground that it does not apply equally to Qwest; i.e., it would accomplish little to require Qwest to forfeit a payment to itself. This argument is sound in part, but it ignores some aspects of cost and it does not address the other foundations on which this charge rests.

First, the AT&T argument does not account for the fact that space reserved by a carrier is unavailable for use by others for so long as it is reserved. Qwest must absorb the carrying costs of the unused space. The cost is real and equal to Qwest whether it or another carrier is reserving the space. It is not clear how Qwest's forfeiture amount of 25 percent of non-recurring charges relates to this carrying cost; however, neither the space reservation nor the billing portions of the Collocation section of the SGAT provide for its recovery in cases of space reservation.

Second, the basis of the forfeiture payment is the non-recurring charges for collocation. These charges include costs for a number of activities that Qwest must incur just to make the reservation, whether or not the reserving CLEC eventually uses that space. If a CLEC is entitled to a full refund upon abandonment of the reservation, then Qwest will not recover the costs it has incurred to create and manage the reservation.

Third, as the FCC recognizes in 47 C.F.R. § 51.323(f)(6), measures to prevent wasteful warehousing of collocation space are appropriate. Attaching a cost to such reservation is a means for limiting space reservation. The fact that nothing would prohibit a CLEC from relinquishing its reserved space to another CLEC for a fee, then recovering on top of that its deposit for

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[311] AT&T Brief, citing the *First Report and Order* at ¶ 604 and 47 C.F.R. § 51.323(f)(4), at page 64.

[312] Qwest Brief at page 39.

[313] Qwest Brief at pages 38 through 42.

making the reservation underscores the usefulness of measures to prevent the stockpiling of collocation space. Certainly the creation of a secondary market for collocation space in Qwest's premises has no material connection with the purposes of the Telecommunications Act of 1996.

In summary, the Qwest proposal is supported by both the need for recovery of actual costs and the prevention of wasteful or inappropriate use of space reservation. While it does not meet a test of perfect symmetry with costs, its design is reasonably related also to other objectives that have at least equal importance in promoting competition between Qwest and CLECs and equality of treatment among CLECs themselves. To the extent that CLECs find this provision unduly expensive, SGAT Section 8.4.1.8 provides for a less costly approach. Therefore, and given the fact that the proposal does bear some relationship to Qwest's costs for: (a) making reservations for CLECs and (b) carrying space that remains unoccupied for the duration of the reservation, this provision of the SGAT is appropriate.

14. Collocation Intervals

General Objection Testimony

WCOM testified in support of shorter intervals in some cases and it criticized the SGAT for failing to require Qwest to adhere to the intervals provided in Sections 8.4.2.2, 8.4.3.1, and 8.4.3.2.[314] McLeodUSA argued that the SGAT's collocation intervals were outside what the FCC requires.[315] Jato said that the Section 8.4.2.2 interval for virtual collocation should be 45 days. It also argued that the FCC requires the 90-day provisioning interval for physical collocation to run from application receipt, not CLEC acceptance of a Qwest price quote and making of a down payment. Jato also sought the elimination of forecast language from the section, because forecasts are not required to obtain the FCC intervals.[316] Jato also asked that the ICDF collocation interval be reduced to 30 days from application date, because such collocation raises no power-supply or space issues. Jato also argued for a 15-day interval between Qwest's determination that ICDF space is available and making the ICDF available to a CLEC.[317] Qwest opposed a WCOM request to include SGAT fines and penalties for failing to meet intervals, citing the Post Entry Performance Plan as the proper forum for addressing them.[318]

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[314] Priday Direct at page33.

[315] Exhibit WS1-MCL-SAJ-4.

[316] Newell Direct at page 13, citing CC Docket Nos. 98-147 and 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Order on Reconsideration and Second Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, ¶114 (rel. Aug. 10, 2000). .

[317] Newell Direct at page 14.

[318] Bumgarner Rebuttal at page 56.

Rhythms specifically objected to the SGAT Section 8.4.2.3 exemption from intervals in the event of "variables in equipment and scope of the work."[319] Qwest's frozen SGAT filing eliminated this provision. Rhythms also noted that Utah required a 45-day interval for collocation provisioning.

Virtual Collocation Testimony

AT&T considered the SGAT Section 8.4.2.2 intervals for virtual and cageless collocation to be too long, given that there would be no cage construction, DC-power cable runs, HVAC upgrades or other time consuming requirements. AT&T testified that 30 days would be sufficient for virtual collocation, and, further that this limit could be reduced to 10 days in the case where only a swap of line cards was required. AT&T testified that a similar time period should apply to cageless collocation as well.[320]

Qwest testified that the FCC did not choose to set virtual collocation intervals. Qwest proposed the existing intervals for physical collocation because it must perform more work [321]

Physical Collocation Testimony

AT&T sought a change to SGAT Section 8.4.3.1 that would require Qwest to conform to the FCC's recently released physical collocation intervals.[322] Qwest testified that it would change the section to meet the FCC Order's requirements.

Interconnection Distribution Frame Testimony

AT&T similarly argued that SGAT Section 8.4.4 should be modified to conform to the FCC's newly announced physical collocation intervals.[323] Jato expressed concern about the lack of guidance on how a CLEC could comply with the forecasting language of Section 84.4.1. Qwest agreed to change the ICDF interval from 90 to 45 days.[324]

Briefs

The Qwest and AT&T briefs focused on the impact that compliance with forecasts should have on collocation intervals. Qwest relied upon an FCC order issued in response to collocation interval waiver requests by itself, Verizon, and SBC to support intervals longer than the national

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[319] Rhythms Comments at page 3.

[320] Wilson Direct at ¶ 229.

[321] Bumgarner Rebuttal at page 53.

[322] Wilson Direct at ¶ 230, citing the FCC's Order on Reconsideration at ¶¶ 28 and 36 and 47 CFR § 51323.

[323] Wilson Direct at ¶ 231.

[324] Bumgarner Rebuttal at page 57.

90-day default standard.[325] Qwest argued that this FCC order allowed an extra 60 days for unforecasted collocation applications not requiring major infrastructure modifications and for even longer intervals where such modifications were necessary.[326] Qwest argued that its use of a 120-day interval for physical and virtual collocation was well within the 150 days that the FCC order would allow for unforecasted collocation applications.[327] Qwest also noted its willingness to accept the physical collocation intervals for virtual collocation, even though the FCC did not require it to do so.[328] Qwest argued that forecasts are not only supported by the FCC, but are "necessary to allow Qwest to plan and direct its resources."[329]

AT&T argued that Qwest overstated the level of support for lengthened intervals that can be inferred from FCC pronouncements. Specifically, AT&T underscored the 90-day intervals set by the FCC and the need for state commission approval for longer intervals.[330] AT&T also argued that the FCC has determined that intervals significantly longer than 90 days would impede CLEC ability to compete effectively.[331] While conceding that the FCC allowed Qwest to increase intervals by up to 60 days, AT&T countered that any extension requires Commission approval and that the FCC expected "Qwest to use its best efforts to minimize any such increases." AT&T argued that Qwest's establishment of 30-day interval extensions for unforecasted applications, even where space is available, were unreasonable and outside what the FCC contemplated.[332] AT&T also said that the FCC intended its order to be interim, emphasizing again that it would apply even then only in the absence of state rules.[333]

AT&T proposed a number of changes to the SGAT language addressing virtual collocation (Section 8.4.2), physical collocation (Section 8.4.3), and ICDF collocation (Section 8.4.4).[334] These changes include:

> Changing from 45 days to 30 days the deadline by which CLEC equipment must be delivered for virtual collocation

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[325] Qwest Brief at page 43.

[326] Qwest Brief at page 44, citing *Attachment B* to Qwest's *Petition for Waiver* and *Amended Order* at ¶¶ 9 and 19.

[327] Qwest Brief at page 43.

[328] Qwest Brief at page 46.

[329] Qwest Brief at page 46.

[330] AT&T Brief at page 50.

[331] AT&T Brief at page 55.

[332] AT&T Brief at page 56.

[333] AT&T Brief at page 57.

[334] AT&T Brief Exhibits or Attachments H, I, and J.

Providing in the case of all forms of collocation that Qwest must use best efforts to minimize the interval provided in those cases where it permitted to extend the standard intervals

Requiring Qwest to complete unforecasted virtual and physical collocations within the same intervals as apply to forecasted ones (90 days from completed application receipt), unless Qwest demonstrated insufficient space, power, or HVAC, in which case 120 days would be allowed (Qwest would allow 120 days without such demonstration)

Allowing the ICDF interval to increase from 45 to 90 days if unforecasted, but only if there is insufficient existing ICDF space or space to add additional ICDFs in an amount sufficient to meet all forecasted needs (Qwest would not require the space showing to extend the interval).

Requiring Qwest to complete forecasted virtual and physical collocations requiring major infrastructure modifications in the 90-day interval (Qwest would have allowed it to request the state commission to extend the interval).

Proposed Issue Resolution: Qwest agreed to add language providing that it would seek to minimize the extent of any allowed lengthening of physical, virtual, and ICDF collocations, thus making the limits it agreed to maximums. Accordingly, CLECs maintain the right to object in the case of bad faith or negligence by Qwest in provisioning collocation according to extended intervals. Moreover, Qwest's extension of the deadline for CLEC equipment to be virtually collocated by 8 days, as opposed to the 15 days requested by AT&T was based upon an analysis of its schedule requirements. The evidence of record supports it as reasonable.

There remains the principal issue of whether extending intervals for unforecasted collocations should depend upon the special showings that AT&T requested. AT&T is correct that the FCC cannot be read as having given blanket authorization to interval extensions in the case of a failure to forecast. Moreover, it cannot be concluded that a failure to grant Qwest an extension in all cases will discourage CLECs from forecasting. Finally, there is no evidence in the record to support a conclusion that Qwest has a clear need to extend durations in cases where, despite the lack of a forecast, it nevertheless has the space, the electrical power, and the HVAC capacity to respond.

While AT&T conceded the need for extensions in cases where facilities are inadequate, Qwest conceded (through accepting the obligation to minimize interval expansions in particular cases) the propriety of relating interval lengths to actual need. AT&T's approach of tying interval extensions to space, power, and HVAC needs establishes a better connection between need and solution. It addresses three of the principal reasons why Qwest might need added provisioning time, while the basic infrastructure modification provisions, upon which there is agreement, allow for consideration of other reasons. In addition, it should be recognized that the FCC does expect ILECs to improve their ability to respond to collocation requests over time. That proper expectation, especially when combined with the resource and facility planning benefits that Qwest can expect from CLEC forecasting, indicate that it is appropriate to narrow future sources of interval extension from the level that the FCC considered to be appropriate on an interim basis.

Qwest certainly did not present substantial evidence that, in a future environment where it could rely substantially on CLEC forecasts, it will necessarily need substantial extensions to meet the occasional unforecasted request for collocation at premises where there is adequate space, power, and HVAC capability. It is true that the lesser the quality of CLEC forecasting the greater will be Qwest's difficulty in responding to collocation requests. However, there is no basis for concluding that forecast quality or completeness would degrade if AT&T's changes were adopted. CLECs who fail to forecast will remain subject to interval risk where space, power, HVAC, or major infrastructure needs exist. One can hardly postulate a general decline in CLEC forecasting in these circumstances. What one can continue to expect is that CLECs will not be able to forecast each and every collocation need with precision. Neither will Qwest.

The SGAT should not punish a failure to apply perfect foresight in an uncertain marketplace. It already will discourage haphazard or negligent forecasting, even after the AT&T changes. Therefore, AT&T's space, power, and HVAC limits on extending virtual, physical, and ICDF collocation should be incorporated into SGAT Sections 8.4.2, 8.4.3, and 8.4.4.

There remains the question of whether Qwest should have the ability to petition to extend the period for forecasted collocations that will require major infrastructure modification. Whether forecasted or not, such collocations may not only take an extended period of time, but may also require very large expenditures. A forecast does not ensure an order, which means that any pre-order work in response to such a forecasted collocation would be at Qwest's risk. It is not reasonable to require Qwest to take such a risk. Qwest's proposal to allow it to request a state commission waiver provides an appropriate method for considering the cost and the interval considerations that are likely to be associated with necessarily infrequent requests of the type involved here. Therefore, AT&T has not shown that a denial of the Qwest right to seek a waiver in these circumstances is warranted.

15. Maximum Order Numbers

WCOM wanted to change SGAT Section 8.4.3.3 to provide that the 5-order maximum for obtaining the provided intervals would be applied on a single-state basis.[335] Qwest's rebuttal testimony agreed to a clarifying change, but did not make a change that would alter the need for individual negotiation of orders in excess of five in the same week.[336]

AT&T briefed this issue. It said that the FCC has not allowed a blanket extension of intervals based on the mere number of applications, but rather has confirmed the need to meet required intervals "absent the receipt of an extraordinary number of complex collocation applications

[335] Priday Direct at page 35.

[336] Bumgarner Rebuttal at page 56.

within a limited time frame".[337] AT&T argued that SGAT Section 8.4.1.9 did not reasonably limit Qwest's right to waive time limits; therefore, it should be eliminated in its entirety.[338]

Qwest cited the large fluctuation it has experienced in CLEC collocation orders, which ranged from 34 in May of 1999 to more than 800 in April of 2000.[339] In supporting its limit on orders subject to provisioning intervals, it relied upon the same FCC provision about an "extraordinary number of complex collocation applications" that AT&T cited.[340]

Proposed Issue Resolution: Qwest should have the opportunity to adjust collocation intervals when the workload becomes unmanageable. Therefore, AT&T's recommendation to eliminate the issue from the SGAT is too harsh. However, while the FCC has said that ILECs must adjust to CLEC demands, it has also clearly said that there is a limit, without providing much guidance about what that limit is or how a state might go about putting specific dimensions on it. Five orders from one CLEC in a single state, whatever their complexity and whatever else is happening across the rest of Qwest's 13 states clearly will not serve well as an expression of the level of work that Qwest can reasonably be expected to accommodate.

To paraphrase the arguments of the briefs, the difference between the CLECs and Qwest is that the number of collocation applications that should trigger an interval extension is between 5 and infinity. The lack of guidance that the parties have provided in narrowing this vast gulf is not the only difficulty in resolving this issue. The frozen SGAT that Qwest filed in this workshop strikes Section 8.4.1.8, which is what AT&T sought. The Qwest brief notes that the section has been renumbered as Section 8.4.1.9, but that Section of the frozen SGAT filing addresses a different issue. It is not clear whether and in what form Qwest has reconstituted this section, which it defends with some vigor in its brief. Nominally, it would appear that Qwest has acceded to AT&T's request to eliminate the section. However, accepting a default resolution does not appear to be warranted either by:

> The fact that Qwest did argue the issue in its brief
>
> The FCC's recognition that some accommodation of Qwest's concerns (presumably at a number of applications that falls between 5 and infinity) is appropriate.

The best way to deal with these curious circumstances is to invite the participants to propose SGAT language in their 10-day filings in response to this report. In order to address the relevant considerations, those filings should specifically address the following criteria:

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[337] AT&T Brief at page 52, citing the *Order on Reconsideration* at ¶ 27 (emphasis added).

[338] AT&T Brief at page 53.

[339] Exhibit WS1-QWE-MSB-11.

[340] Qwest Brief at page 48.

Why any state-specific (as opposed to regional or sub-regional) limit should be considered to comport fully with the way that Qwest responds to collocation requests

How the FCC's sound recognition that complexity of the applications is material should be reflected in any provision granting Qwest relief from established intervals

Why an argument that rejects any defined standard of relief (i.e., one expressed in terms of a specific language proposal) should not be viewed as justifying a default to another defined standard, however liberally expressed

Where between the end-points of the application frequency cited by Qwest (34 to over 800 per month across the region) lies the level of applications to which Qwest can be expected to respond.[341]

[341] If one were to interpolate Qwest's reported monthly number from May of 1999, one would calculate an average weekly total of about 8. If a CLEC had submitted as little as one more collocation order than half of those requests in an "average" week during that month, then Qwest could justify for that CLEC an interval extension in the month with the smallest reported collocation application workload.

VII. Checklist Item 11 – Local Number Portability

Background

Number portability is defined as the ability of customers "to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one service provider to another."[342] Section 271(c)(2)(B) of the Telecommunications Act, or checklist item 11, requires Qwest to comply with the number portability regulations adopted by the FCC.[343] Section 251(b)(2) requires all LECs "to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[344]

Issues Resolved During This Workshop – Local Number Portability

1. Restricted Numbers

AT&T requested the inclusion in the SGAT of language that would preclude the porting of restricted numbers. Qwest agreed, and made a change to SGAT Section 10.2.2.5 to accomplish this purpose.[345] This issue can be considered closed.

2. Identifying NXXs Available for Porting

In response to a WCOM request, Qwest agreed to add an SGAT provision (Section 10.2.2.6) defining when NXXs are available to port.[346] This issue can be considered closed.

3. Porting of Direct Inward Dial Block Numbers

In response to an AT&T request, Qwest agreed to add SGAT language (Section 10.2.2.7) allowing the porting of a portion of a block of numbers.[347] This issue can be considered closed.

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[342] 47 U.S.C. §153(30).

[343] 47 U.S.C. §271(c)(2)(B)

[344] Id., §251(b)(2)

[345] Bumgarner Rebuttal at page 66.

[346] Bumgarner Rebuttal at page 67.

[347] Bumgarner Rebuttal at page 67.

4. LIDB De-Provisioning

In response to an AT&T request, Qwest agreed to add an SGAT provision (Section 10.2.2.8) de-provisioning the Line Information Data Base entry where the CLEC is not using it.[348] This issue can be considered closed.

5. Introductory Section Amplification

Both AT&T and WCOM requested substantial additional detail in the introductory sections of the SGAT portions that deal with LNP.[349] Qwest agreed to make most of the recommended changes.[350] The changes that Qwest made essentially accomplished what AT&T and WCOM were seeking and neither objected to Qwest's way of responding in briefs (WCOM filed no brief on any issue under this checklist item). Therefore, these issues should be considered closed.

6. Service Management System

In response to AT&T and WCOM requests, Qwest added SGAT Section 10.2.3, which subjects its service management system to the standard-agreement and processes requirements and standards of certain, identified industry groups and documents.[351] This issue can be considered closed.

7. Applicability of "Operations Team" Guidelines

WCOM objected to the SGAT Section 10.2.3, which makes "consolidated Regional Operations Team requirements and guidelines" applicable to the provision of LNP. WCOM in particular was concerned about the application of industry-group guidelines, which it said it had difficulty in the past in trying to apply guidelines.[352] Qwest's frozen SGAT filing deletes the reference to the guidelines of this group. This issue can therefore be considered closed.

8. Database and Query Services

In response to an AT&T request, Qwest added SGAT language (Section 10.2.4) addressing charges for data base queries, responsibility for populating data bases, and minimizing service outages for LNP-related activities.[353] This issue can be considered closed.

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[348] Bumgarner Rebuttal at page 67.

[349] Wilson Direct at ¶¶ 13 through 18; Priday Direct starting at page 35; Testimony of Leilani J. Hines on behalf of WORLDCOM, Inc, September 29, 2000.

[350] Bumgarner Rebuttal, beginning at page 62.

[351] Bumgarner Rebuttal at page 70.

[352] Priday Direct at page 36.

[353] Bumgarner Rebuttal at page 70.

9. Ordering Standards

Qwest proposed to change the SGAT Section 10.2.5.1 ordering standards by incorporating a reference to SGAT Section 12 and by removing the reference to the IRRG as a source for LNP ordering details. Qwest observed that the language had been agreed to in Washington's workshops;[354] no participant objected to this language or addressed it in briefs. Therefore, this issue can be considered closed.

10. Managed Cuts

Qwest agreed to add a number of SGAT details (Section 10.2.5.4) that AT&T wanted for the purpose of detailing the managed cuts offering.[355] This issue can be considered closed.

11. Maintenance and Repair

Based upon the request of AT&T, Qwest agreed to add SGAT language (Section 10.2.6) to address maintenance and repair responsibilities.[356] This issue can be considered closed.

12. Prices

As requested by WCOM, Qwest agreed to delete as unnecessary a statement about preservation of its legal rights to contest FCC rules involving prices.[357] This issue can be considered closed.

13. Provisioning Intervals

AT&T objected to the length of the SGAT Section 10.2.6 provisioning intervals. AT&T felt that the intervals for LNP where the CLEC (rather than Qwest) was provisioning the loop should be shorter. AT&T also argued that the size thresholds (at which longer intervals begin to apply) were too low. Finally, AT&T argued that the facility-unavailability exception to intervals should be removed, because there are no facilities involved with number portability.[358] WCOM requested that the 3:00pm reference be specified as meaning Mountain Time.[359] Qwest's frozen SGAT filing made changes to address these issues. Therefore, this issue can be considered closed.

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[354] Exhibit WS1-QWE-TRF-1-5.

[355] Bumgarner Rebuttal at page 77.

[356] Bumgarner Rebuttal at page 79.

[357] Bumgarner Rebuttal at page 80.

[358] Wilson LNP Direct at ¶ 19.

[359] Priday Direct at page 36.

Non-SGAT Issues

Several parties filed testimony on issues not related to the SGAT. Sprint's testimony contained some specific concerns about Qwest's ability to port numbers.[360] First, Sprint noted that the porting process for a line that is currently a DSL line takes an additional five days to complete, as compared to a non-DSL line. Second, Sprint complained that it has a problem with Qwest "tearing down" service. The problem apparently occurs when the customer has changed plans and Sprint must verbally request a stop on the porting order. Sprint stated that Qwest has frequently failed to actually stop the order from progressing, which results in the existing service being "torn down" and not replaced, causing loss of service. In its brief, Sprint failed to follow-up on either of these issues, and in fact did not submit any argument at all on number portability.

David LaFrance of NEXTLINK also noted issues with Qwest on the issue of number portability.[361] The primary issue related to problems associated with coordinated cut-overs of unbundled loops and LNP. NEXTLINK believes that these are primarily performance issues that are to be addressed by the Regional Oversight Committee (ROC), and will delay submitting any testimony on that issue until the Commissions evaluate Qwest's performance during ROC testing.

The Wyoming Consumer Advocate Staff (WCAS) also discussed local number portability in its testimony[362] and brief.[363] The WCAS brief noted that while the Commission has received complaints, "David Walker concluded that he could not gauge the extent to which local number portability works in Wyoming, except that there have been reports of huge delays in transferring service. We simply will not know if the SGAT will alleviate those problems until competitive companies have had some experience with Qwest pursuant to the SGAT terms and conditions".[364] This argument was addressed in the ***Common Issues*** portion of this report.

Issues Remaining in Dispute – Local Number Portability

1. Coordinating LNP and Loop Cutovers

When a customer switching to a CLEC wishes to retain the same phone number, it is important to assure that the number is ported in a timely fashion. The two key activities in making a

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[360] Intervenor Responsive Testimony of Jeffrey J. DeWolf on behalf of Sprint Communications Company L.P., September 5, 2000 at 7-9.

[361] LaFrance Direct at page 18.

[362] Walker Directat page

[363] Post-workshop Brief of the Consumer Advocate Staff on Issues Relating to Interconnection, Collocation, Local Number Portability, Resale and Reciprocal Compensation, April 10, 2001.

[364] Id. at page 7.

successful number port are the nearly contemporaneous (a) establishing a loop connection between the customer's inside wire and the CLEC switch cutting and (b) porting the number. Where Qwest will continue to provide the loop (as a UNE) after the change, it performs much of the work associated with both these activities. In that case, the coordination that it offers between number porting and loop cutover appears to be satisfactory to the participants.

There is a dispute, however, in the case where the CLEC will use its own loop. In this case, Qwest's responsibility begins by setting a trigger, which alerts the Qwest switch that the number will be ported. The CLEC then makes the loop connection and it ports the number by sending a message to a regional database. Qwest also will have preset the disconnection of the customer (which is accomplished through switch translations) from its switch, to occur at a specified time. Unless the CLEC gives Qwest notice of 4 hours or more before that preset time, the customer will be disconnected from Qwest's switch. If the CLEC has not been able to complete its loop connection work and port the number when this disconnection occurs, the customer will be without service.[365]

This issue arises from the distinction that Qwest's makes between "coordinated" and "managed" cuts. Basically, AT&T wants the added benefits of coordinated cuts, while Qwest is willing only to offer managed cuts. This problem is important to AT&T in the residential market; there are satisfactory procedures for dealing with the business market. Those procedures are for "managed cuts", during which a Qwest representative is in live communication with CLEC personnel as they do the work needed to transfer the customer. The Qwest representative can deal in real time with any problems that would otherwise cause a Qwest disconnect before the CLEC was ready for it to happen. AT&T considers that method, which is labor intensive for Qwest and thus expensive, appropriate (apart from concerns about what Qwest wants to charge for it) for transfers of high volume, particularly outage-sensitive users, where cutovers are necessarily complex, but inappropriate in the residential market, where one or only a few lines per customer are being transferred.[366]

AT&T argued that the problem is especially important to carriers like itself, who are using cable or fixed wireless networks to provide loop capability, thus obviating the need to take loops from Qwest as UNEs. In such cases, Qwest is unwilling to provide the same type of coordination that it offers when it is providing the loop as a UNE. Qwest provides that service through coordinated cuts, in which Qwest can assure that the customer transfer work is completed before the customer is disconnected from the Qwest switch.

It is this disconnect that lies at the heart of AT&T's problem. Specifically, if the customer is disconnected from the Qwest system before the CLEC can cut the loop over, then the customer will experience a service disruption. AT&T argued that exposing customers unnecessarily to such disruptions (only when they are changing service) would create a barrier to competition. Moreover, AT&T argued that the particular problems associated with cutover coordination

[365] AT&T Brief at page 6 and Qwest Brief at page 55.

[366] AT&T Brief at page 9.

where a CLEC is using its own facilities to provision loops (given that the coordination problem is addressed where Qwest is providing the loop as a UNE) will especially discourage the development of facilities-based competition.

The service-disruption issue arises largely because of the timing involved in how Qwest addresses the number porting and loop disconnection needs. When a number is to be ported, whether Qwest or the CLEC is to provision the loop, Qwest sets a trigger that is timed according to the due date that the CLEC sets. The CLEC tells Qwest when it intends to cut the loop over and port the number. Qwest automatically accomplishes: (a) the switch translations (i.e., the activity that disconnects its service to the customer), and (b) completion of the service order late on the day provided by the CLEC. Qwest agreed during the workshop to set this completion time and with it to accomplish the disconnection of its customer at 11:59 p.m. on that day. Prior to the workshop, Qwest had used an 8:00 p.m. disconnect time.[367]

Importantly, Qwest has sought to keep these events within the same day as the CLEC's specified day in order to allow the flow through of all ordering, porting, disconnect, and other service-order activities to be done on an automated basis. Qwest said it must deal with more than 4,000 number ports per day. Its current systems limit it to completing activities on the same day, if they are to remain automated. In addition to citing these OSS limitations, Qwest also noted that avoiding double billing and assuring proper 911 database updates also support the requirement for "same-day" disconnection of service from Qwest.[368]

If CLECs actually finish their work on their specified date, there are no problems. However, if, for some reason, they do not, then the customer is left without service, because Qwest will disconnect its service at midnight. Qwest noted that none of the reasons for non-completion of the work were its responsibility. Qwest essentially has argued that it is appropriate for CLECs to bear responsibility for their own failure to get their scheduled work completed, whether due to CLEC workload, weather, or customer failure to be present for premises visits. Qwest felt that the SGAT and its operating practices already made adequate provision for CLECs to provide notice in time to delay disconnects, should problems occur. These provisions included:

> Moving disconnect time back to midnight, which would allow for CLECs to provide notice as late as 8 p.m. in order to be reasonably assured that disconnect could be delayed;
>
> Availability of managed cuts to allow for real-time changes in disconnect as CLECs encountered problems with particular cutovers;
>
> Increased staffing at late hours to allow for the possibility (but not the assurance) that post-8 p.m. CLEC notifications would still enable a delay in disconnects.

[367] Qwest Brief at page 55.

[368] Qwest Brief at pages 54 through 57.

Moreover, Qwest cited the fact that disconnects after CLEC notice ran at only a 2 to 3 percent level, and that two CLECs were accounting for a disproportionate share of those.[369] AT&T presented evidence that disconnects were happening no matter what time during the day that it notified Qwest of a desire to delay.[370]

AT&T expressed a willingness to accept alternate solutions to the problem:

> Requiring Qwest not to disconnect until after confirmation of a successful disconnect
>
> Automated queries to verify number porting before disconnecting
>
> Setting disconnects for 11:59 p.m. of the day after scheduled cutover.

AT&T's witness believed that there were querying methods that could work on an automated basis. However, he did not demonstrate that any specific method would surely work.[371] Qwest made inquiries of its technical staff and in the industry, and concluded: (a) that system changes would be necessary to give it the capability to make automated inquiries, and (b) that there was no ILEC currently offering that capability. However, Qwest was not able to indicate what specific system changes would be necessary, how long they would take, or what they would cost.

Qwest also argued that the confirmation option and the "day-after" option would require it manually to address more than 4,000 number ports per day, which would be cumbersome and expensive. Given the low number of problems with "premature" disconnects, the fact that they were confined largely to two CLECs, and the availability of managed cuts for CLECs with particular problems or needs, and believing that Qwest should not be required to bear the cost of special manual efforts, Qwest declined to accept any of AT&T's proposed remedies.

Proposed Issue Resolution:

It is first important to deal with parity and discrimination issues, which ultimately are but a distraction in resolving this issue. Two important and countervailing factors define the dilemma that resolving this issue presents.

First, this is a problem that affects CLECs only; even more narrowly, it appears in particular to affect to a substantial degree only those seeking to bring facilities-based competition to the loop portion of the network. Therefore, the issue cannot be resolved through the application of notions of parity; Qwest does not have this problem in serving its own end users. Neither is this issue one of discrimination; one cannot conclude that managed cuts represent an inferior version of coordinated cuts. The two processes apply to demonstrably different circumstances; the former is for cases where Qwest provides number porting set up and provides the loop as a UNE, while the

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[369] Qwest Brief at page 56.

[370] AT&T Brief , Attachment A, "Utah Broadband Port Cancellation Data".

[371] AT&T Brief at page 10; Qwest Brief at page 54.

latter is for cases where Qwest provides only number porting set up while the CLEC provisions its own loop.

Second, Qwest does not cause the things that prevent CLECs from completing their work as scheduled. Moreover, some of them, like weather and the failure of customers to be present for premise visits, are the very same kind of problems that cause work difficulties and inefficiencies for all carriers, including Qwest. Therefore, care must be taken to assure that the resolution of this issue does not improperly serve to transfer CLEC-caused costs to others. For example, if a CLEC falls behind on its new-service work, how much of the obligation should it bear in the form of overtime to finish work on time, as opposed to the obligation that Qwest must bear if it is to be asked to provide manual intervention at its own expense?

The FCC has addressed the standard for evaluating ILEC performance in the related, but distinct area of coordinated cuts, saying that:[372]

> *The BOC must demonstrate that it can coordinate number portability with loop cutover in a reasonable amount of time and with minimum service disruption.*

There is no reason to apply a lesser standard in cases where the CLEC, rather than Qwest, is providing the loop. The need for minimizing service disruptions is no less when the CLEC provides its own loop and there should be no penalty applied to a carrier who brings facilities based competition to the local marketplace. Thus, while there may be appropriate differences in what the incumbent can be expected to do, based on whether its personnel are or are not involved in making loop arrangements as part of a cutover, the standard for judging their sufficiency should be the same. Thus, Qwest should undertake reasonable efforts to minimize service disruptions associated with number porting where CLECs provision their own loops.

What is reasonable is, however, more than a matter of what is technically feasible. If a particular form of coordination or management of cutovers imposes demonstrably greater costs, it is reasonable to expect those CLECs requesting them to pay them. Otherwise, responsibility falls to Qwest or must be picked up by other CLECs who require a less burdensome form of coordination. Neither of those two alternatives is appropriate. Nor would it be correct to attribute the costs here to number porting; they are a function of the service disconnection process. That number porting may add complexity to the disconnection process is not determinative.

Therefore, if there are material cost differences in the activities necessary to minimizing service disruptions where CLECs provision their own loops, they should be chargeable to those CLECs that use the more resource intensive process. The evidence does not support a finding that Qwest can provide the coordination that AT&T wants through simple, inexpensive changes in its service-order system or by automated querying of Qwest's switches. Even AT&T's alternative, "day-after" solution would appear to require substantial manual intervention by Qwest. Qwest has presented evidence that the capability to adopt AT&T's automated solution or its alternative solution (without substantial manual intervention) does not exist. AT&T has argued that similar

[372] BellSouth Second Louisiana 271 Order at ¶ 279.

solutions have been ordered in the case of other ILECs, but there is no basis on the record for deciding that Qwest's systems have the same capabilities.

There is a more material dispute, however, about what Qwest can do to provide a timely response when it is notified by a CLEC that a disconnect should not occur on the requested date. Qwest's brief talks of 8 p.m. notices in terms close to conceding that Qwest can respond in time if notice comes to it no later.[373] Qwest Witness Bumgarner also said at the workshop that setting disconnects at 8 p.m. (i.e., before Qwest agreed to change the disconnect time to 11:59) "would give them [CLECs] plenty of time to give us a call so that we could try to stop that disconnect from happening at eight o'clock and move the due date out."[374] AT&T presented evidence that it has experienced disconnects even for notifications made in the morning.

Qwest's testimony and argument support a finding that it is reasonable to expect Qwest to defer disconnects provided that notice is given by the CLEC by 8 p.m. of the day involved. Pending resolution of the remainder of this issue's aspects, therefore, there is a basis for requiring Qwest to commit to responding to notices provided by 8 p.m. Applying Qwest's evidence and argument, there should not need to be a standard of less than 100 percent in meeting this obligation. If the failure-to-disconnect rate is only 2 to 3 percent when there is no notice by 8 p.m., then notice by this deadline should produce exceedingly few, if any, failures. While AT&T's evidence to the contrary was disturbing, it came from only a few-day sample. Moreover, Qwest has committed in its brief to the introduction of new processes, which were developed through a recent trial in Utah, to better assure that timely CLEC notices result in deferral of disconnects.

Assuming the adoption of the 8 p.m. standard, there is no basis for demanding that Qwest undertake at its expense any as yet unidentified automated methods or that it provide for the manual support involved in the day-after alternative. However, we must conclude that the nature of the evaluations that Qwest has undertaken are not sufficient to rule out the reasonable possibility that further investigation will discover a cost effective means for providing even further assurances of an effective disconnect deferral process. Therefore, Qwest should be obliged to undertake prompt and reasonable efforts, in consultation with any CLECs who wish to participate, to determine whether there are low-cost means for automating coordination activities under either the day-of or the day-after alternatives. After completion of such study and analysis, any party would be free to recommend any changes in the SGAT provisions it considered to be appropriate.

In the meantime, there is no basis for concluding that the managed cut provisions of the SGAT will fail to provide whatever additional assurances that a particular CLEC may feel that it requires. AT&T did argue that Qwest's prices for managed cuts are in excess of its costs.

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[373] "It is only CLECs that fail to complete their work **and** fail to timely notify Qwest, that may have their customer disconnected from Qwest before the number porting is complete. This occurs only two to three percent of the time." Qwest Brief at page 53.

[374] October 4, 2000 transcript at page 405.

However, AT&T recognized as well that these workshops are not going to resolve pricing issues.[375] In any proceeding involving costs, AT&T and any other participant may argue that position and may test as well whether the kind of "management" needed in the residential switches of concern is lesser in scope and therefore cost than is the case for complex, business-customer cutovers. To the extent it can demonstrate a categorically lesser level or complexity of work, a party could then argue that a lower rate for residential or small customer managed cutovers is appropriate.

Adding the following language at the end of SGAT Section 10.2.2.4 will accomplish the purpose of assuring that Qwest is subject to a sufficient obligation to minimize disconnects:

> *If a CLEC requests Qwest to do so by 8 p.m. Mountain Time, Qwest will assure that the Qwest loop is not disconnected that day.*

Beyond making this change, Qwest should also commit to the study of more automated means of providing the required coordination.

[375] AT&T Brief at page 18.

VIII. Checklist Item 13 - Reciprocal Compensation

Background

Reciprocal compensation refers to the method for compensating carriers for completing local calls that are originated on the network of another carrier. Section 271(c)(2)(B)(xiii) of the Act (Checklist Item 13) requires an RBOC's access and interconnection agreements to include reciprocal compensation arrangements that are consistent with the requirements of Section 252(d)(2).[376] Section 252(d)(2) of the Act governs such compensation for transport and termination of traffic; it states that, in order for these arrangements to be considered just and reasonable, they must provide for the mutual and reciprocal recovery by each carrier of the costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. The compensation must be determined on the basis of a reasonable approximation of the costs of terminating such calls.[377]

Section 251(b)(5) places the duty on LECs to establish a reciprocal compensation arrangement for transport and termination. Section 51.701 of the FCC rules addresses the scope of the reciprocal compensation:

> *(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.*
>
> *(b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:*
>
> *(1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or*
>
> *(2) telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.*[378]

The FCC has determined that the ILEC's transport and termination rates should be used as a presumptive proxy for the CLEC's costs of transport and termination. Therefore, reciprocal compensation should be symmetrical and the same rates (i.e., Qwest's rates) should apply to both parties. Symmetry is described in Section 51.711:

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[376] 47 U.S.C. §(c)(2)(B)(xiii).

[377] Id. §252(d)(2)(A).

[378] 47 C.F.R.¶51.701.

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (a) and (b).

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same service

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier' forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographical area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.[379]

The parties to this proceeding agreed not to conduct any live examination of witnesses on the issue of reciprocal compensation. Qwest provided transcripts from the Washington and Colorado workshops involving reciprocal compensation, and those have been made part of the record here. Interested parties filed briefs on the remaining issues in dispute. The SGAT's reciprocal compensation provisions are found in several parts of Section 7, Interconnection, but primarily in Section 7.3, Reciprocal Compensation. Most of the SGAT language issues were resolved outside of this workshop among the parties.

Issues Resolved During This Workshop – Reciprocal Compensation

1. Tandem Switching Definition

AT&T contended that Qwest's Tandem Switching definition was inconsistent with the Act. AT&T argued that the FCC rule at 47 C.F.R.§ 51.711(a)(3) provides

> [w]*here the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.*

AT&T asserted that Section 4.11.1 of the SGAT, which follows, improperly defined a tandem:

> *4.11.2 "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent that such switch(es) actually*

[379] 47 C.F.R.¶51.701. Paragraph b provides an exception for the CLEC to obtain non-symmetrical rates by filing its own cost studies and paragraph c addresses paging services. No CLEC files its own cost study,

> *serve(s) the same geographical area as Qwest's Tandem Switch or is used to connect and switch trunk circuits between and among other Central Office Switches. Access tandems provide connections for exchange access and toll traffic, while local tandems provide connections for EAS/Local Traffic.*[380]

XO/ELI also argued that Qwest's SGAT violated federal law by requiring that the CLEC switch be treated as an end office switch for reciprocal compensation purposes.[381]

Qwest agreed to amend its SGAT to provide that a CLEC's switch will be treated as a tandem switch for reciprocal compensation purposes if the CLEC's switch meets the functional and geographic requirements of a tandem switch.

2. Including IP Telephony in Switched Access

AT&T argued that Qwest has attempted to include IP (Internet Protocol) Telephony as a switched-access service subject to access charges. AT&T asserted that IP Telephony has been classified as an Enhanced Service Provider (information service provider) and, because of its status as "end user" under the FCC rules, is considered exempt from access charges.[382] Accordingly, AT&T submitted that there has been no change in FCC policy on this issue since 1999, when a Qwest witness stated, "I understand that the Commission has required reciprocal compensation between carriers for IP traffic, and we see no reason why the Commission should change its position." AT&T recommended that Qwest delete the references. Sprint also requested that Qwest eliminate SGAT provisions regarding IP telephony traffic.[383]

Qwest's brief did not address the IP Telephony issue specifically but subsumed it in its opposition to the inclusion of ISP traffic for reciprocal compensation.

Section 5 of the Frozen SGAT contained changes that excluded references to IP Telephony. These proposed revisions to the SGAT addressed AT&T's concern about the treatment of IP Telephony and they are appropriate. References to IP telephony have been excluded by the revisions of the SGAT.

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[380] AT&T's brief at page 47.

[381] XO/ELI brief at page 8.

[382] AT&T's brief at 30.

[383] Sprint Brief at page 18.

Issues Remaining in Dispute – Reciprocal Compensation

1. Excluding ISP Traffic from Reciprocal Compensation

AT&T, Sprint, Visionary and InTTec, and XO/ELI asserted that Qwest was improperly excluding ISP (Internet Service Provider) traffic from reciprocal compensation in the SGAT. Contact Communications,[384] WCOM,[385] NEXTLINK,[386] and e.spire[387] made the same point in their testimony. AT&T specifically identified Section 7.3.4.1.3, which provides:

> *7.3.4.1.3 As set forth above, the Parties agree that reciprocal compensation on a mutual exchange of traffic basis only applies to EAS/Local Traffic and further agree that the FCC has determined that Internet related traffic originated by either Party, (the "Originating Party") and delivered to the other Party, (the Delivering Party") is interstate in nature. Consequently, the Delivering Party must identify which, if any, of this traffic is EAS/Local Traffic. The Originating Party will only pay reciprocal compensation for the Delivering Party has substantiated to be EAS/Local Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.*

AT&T also pointed out that Qwest, through SGAT provisions 7.3.1.1.3.1 and 7.3.2.2, also sought to exclude ISP traffic from reciprocal compensation through its definition of local traffic.[388]

Qwest relied on a number of arguments to support its position that ISP traffic is not a proper subject for a 271 proceeding. First, Qwest argued that ISP traffic is jurisdictionally interstate and, as such, is not subject to reciprocal compensation treatment. Qwest contended that the FCC in its February 25, 1999, ruling in the *Local Competition* docket found that ISP-generated traffic was interstate and therefore not subject to reciprocal compensation.[389] Second, Qwest asserted that in the *Bell Atlantic New York Order*, the FCC conclusively determined that compensation for ISP traffic was an "inter-carrier compensation issue," not a reciprocal compensation issue, and therefore not a proper consideration for a 271 proceeding.[390] Qwest said that the FCC determined that addressing the treatment of ISP traffic is not a requirement of checklist item 13. Finally,

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[384] Testimony of Steve Mossbrook on behalf of Contact Communications, at pages 9-10.

[385] Testimony of Mark Argenbright of behalf of MCI WCOM, Inc. at pages 6-13.

[386] LaFrance Direct at page 7.

[387] Direct Testimony of David F. Kaufman on behalf of e.spire Communications, Inc., at page 6.

[388] AT&T's Brief at pages 24 and 25.

[389] Qwest's Brief at pages 63 and 64.

[390] Freeberg Rebuttal at pages 32 and 33.

Qwest contended that the SGAT provisions are consistent with the FCC's "Declaratory Ruling" in its Local Competition docket and that the Courts, while given the opportunity, have not remanded it for reconsideration on the issue of reciprocal compensation.[391]

AT&T asserted that the FCC has refused to interfere with commission treatment of ISP traffic as it relates to interconnection agreements. AT&T pointed out that the FCC acknowledges that it does not have an appropriate mechanism in place to address ISP traffic compensation, and therefore defers the matter to state commissions. AT&T also argued that the FCC found that where parties have included reciprocal compensation within their interconnection agreements, "they are bound by those agreements, as interpreted and enforced by the state commissions".[392] AT&T listed a number of different state commissions that have required the RBOCs to treat ISP traffic under reciprocal compensation provisions in their interconnection agreements.[393] Finally, AT&T pointed out that the Court of Appeals in the Bell Atlantic case had remanded the question whether ISP traffic was local or interstate back to the FCC for further explanation and analysis, and that the FCC has not yet acted on this issue.

After the filing of briefs, the FCC released, on April 27, 2001, an *Order on Remand And Report and Order* in CC Docket No. 96-98 and 99-68. That order found that Section 251(g) serves to exclude the traffic at issue here from the reciprocal compensation provisions of Section 251(c). The FCC went on to provide for reciprocal compensation for Internet-bound traffic under its Section 201 authority. The FCC provided for interim treatment for a 36-month period. The FCC also said, at paragraph 82:

> *This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under Section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke Section 252(i) to op into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic.*

Proposed Issue Resolution: The FCC has asserted jurisdiction over ISP traffic under Section 201, has decided that Section 251 excludes ISP traffic from such compensation, and has precluded states from addressing it. Thus, the treatment of ISP traffic as a condition for approval of checklist 13 requirements is inappropriate. However, this conclusion does not make an examination of the SGAT irrelevant to state commissions for all purposes. The FCC's very recent order includes requirements that cause concerns with the SGAT language. For example,

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[391] Qwest's Brief at page 64, footnote 150.

[392] AT&T's Brief at page 26.

[393] AT&T's Brief at page 28.

paragraph 79 establishes a presumption about the amount of traffic that is Internet-bound, in recognition of the inability of some carriers to measure the relevant traffic. SGAT Section 7.3.4.1.3 requires the delivering carrier to identify ISP traffic. For another example, paragraph 89 of the order does not permit an ILEC to benefit from the order's caps on reciprocal compensation rates for ISP traffic unless it elects to exchange all traffic between carriers at those same rates.

Qwest's SGAT did not anticipate such a novel approach of first legally disconnecting then for some purposes reconnecting ISP traffic with other exchanged traffic. This provision has the effect, where ILECs make the required election, of negating state decisions about reciprocal compensation even in cases where there is no doubt about state authority to act. Where ILECs do not make the election, then the order provides that they must exchange ISP traffic at the rates that states have approved or arbitrated.

Provisions like these call for an examination of the SGAT in order to determine all those areas where it requires change to reflect the FCC's order. Whether or not the FCC wishes to hear about ISP traffic in the Section 271 context, the participating states have a substantial interest in assuring that the SGAT that CLECs in their states may use reflect applicable law and sound policy in those subject areas that the FCC has not taken from them in the now long-standing and almost undoubtedly unfinished struggle to find clearer, better, or more uniform ways of dealing with the relationships between ILECs and CLECs.

The participants should, therefore, provide as part of their 10-day comments proposals for changing all those sections of the SGAT affected by the April 27, 2001 FCC order.

2. Qwest's Host-Remote Transport Charge

AT&T maintained that SGAT provision 7.3.4.2.3 improperly requires CLECs to pay tandem transmission rates for transport between a Qwest host switch and a Qwest remote office. According to AT&T, Qwest chose to locate remote switching units in its network for economic purposes, in preference to other alternatives, e.g., digital loop carrier. AT&T said that, like digital loop carrier, Qwest's use of remotes is merely a loop aggregation technique. AT&T concluded, therefore, that Qwest's host switch is not performing tandem functions for the remote switch. Furthermore, AT&T asserted that Qwest has admitted that the "umbilical" between the host and remote is not a trunk, because the trunk modules remain at the host and are not moved to the remote as would be required for the umbilical to be classified as a trunk. Therefore, AT&T argued that reciprocal compensation is therefore not due to Qwest for transport between its host switch and a Qwest remote office.[394]

AT&T argued, that, should its first argument not be accepted, then CLECs should be permitted to recover their costs for the transport to nodes along a SONET ring, because their function is similar; i.e., aggregating individual loops and delivering the traffic to CLEC loops. Therefore,

[394] Wilson Direct at page 42.

AT&T proposed that CLECs should be permitted to assess Qwest transport charges for Qwest's use of the CLEC SONET rings.[395]

Qwest countered that the connection between its host and remote switches is not the equivalent of a local loop. The remotes switch calls in the areas they cover, without having to use the host switch. Calls outside this area must be transported the host for switching. Accordingly, calls outside of the local area require that Qwest transport those calls along dedicated paths between the host and remote switches. Therefore, Qwest contended that these "umbilicals" consist of trunks, which, according to accepted industry practice, terminology and costing conventions, constitute interoffice facilities.[396]

Under current FCC separation rules, Qwest said that the loop cost is allocated by using a fixed allocator consistent with its non-traffic sensitive nature, while traffic sensitive costs are recovered via local call termination rates. Qwest said that it does not recover the costs of the umbilical in its local loop rates, and denial of its proposed SGAT provision would result in ignoring federal law and industry engineering practices.[397]

Finally, Qwest contended that AT&T's argument for not being compensated for transport to nodes along a SONET ring is inappropriate in this proceeding. Qwest asserted that AT&T must rely on Qwest's costs and symmetrical transport and termination rates.

Proposed Issue Resolution: One issue that has been raised is whether the characteristics of the umbilical from the host to the remote make it more like a local loop or a trunk. It contains some features of both. The umbilical furnishes service to more than one end-user, which gives it a characteristic more typical of a trunk. However, other loop concentration techniques may share this characteristic, even though there is no contention that they are other than part of the loop. On the other hand, the line modules are moved to the remote switch while the trunk modules remain on the trunk side of the host switch that gives the umbilical characteristics of a local loop. Returning to the first hand, the umbilicals lie upstream from equipment that does perform switching and it can be observed that hosts and remotes together provide switching functions, much like end-office switches and tandems work together to share the switching burden involved in completing calls.

AT&T agreed that the remote constitutes a switch module. AT&T grounded its argument on the fact that "interoffice facilities" should end on the trunk side of the switch, which Qwest conceded to be at the host. AT&T's approach would make the umbilicals part of the loop. AT&T has underscored the value of remotes as switches in connection with collocation. AT&T argued in fact that these capabilities are very important to allowing competition to develop in areas where end users are far from central offices. That such end users are, if anything, more characteristic of

[395] Wilson at page 43.

[396] Freeberg Rebuttal at pages 75 and 76.

[397] Freeberg Rebuttal at page 78.

the end users in these seven states was compelling evidence in support of allowing CLECs to use remotes as switches in rural areas. The resolution of this issue will be with recognition of the importance of these facilities as switches.

The starting point of Qwest's response to this argument was that AT&T would secure the use of the umbilical for free if it were to be excluded from transport charges. Qwest also demonstrated that these umbilicals constitute connections between two switching systems, showing that the remote performs its own "in area" switching functions in addition to carrying traffic to the host for switching outside that area. This feature of Qwest's network design makes the host and the remote identifiable as individual, albeit closely related, switching systems. Moreover, there is no basis for concluding that the use of remotes, which CLECs also consider so important to serving rural areas, represents an inefficient technology.

Assuming, therefore, that Qwest does not recover the costs of the umbilicals in its loops, it is proper to include them in transport prices. Should it be determined in a cost docket that this assumption is incorrect, then the costs should be removed from the calculation of loop or transport prices, as the evidence and argument merit.

AT&T's argument that it should receive compensation for transport to SONET ring nodes is unsound. Qwest's transport and termination rates must be based upon Qwest's costs. If a CLEC wishes to depart from the mutual and reciprocal nature of these costs, then it can present cost studies demonstrating that its own costs are different. The FCC did not require CLECs to undertake this burden and AT&T has not chosen here to meet it on a voluntary basis. Moreover, there would be no sound basis for allowing a CLEC to rely upon reciprocity in general, while picking off particular cost elements for separate treatment. Thus, it should be concluded that AT&T is being adequately compensated for all of its transport and termination costs, including but not limited to the specific cost element it raised here, through the mutual and reciprocal application of Qwest's prices.

3. Commingling of InterLATA and Local Traffic on the Same Trunk Groups

WCOM and AT&T said that certain spare special access circuits are being used for interconnection service, and therefore the Telecommunications Act requires that these circuits be priced at TELRIC prices.[398] These include circuits in facilities that interexchange carriers have secured in connection with the provision of long distance service. The issue arises when such a carrier seeks to use a portion of the capacity of those trunk groups to provide for interconnection with Qwest to exchange local traffic.

AT&T and WCOM asserted that the Section 7.3.1.1.2 of the SCAT should be rewritten as follows:

> *If CLEC chooses to use an existing facility purchased as a Private Line Transport Service from the state or FCC Access Tariffs the tariff rates shall be ratcheted to*

[398] AT&T's Brief at page 55.

> *reflect the local usage and the recurring rate for Entrance Facility shall be priced at the TELRIC based rates.*

WCOM and AT&T argued that the FCC has prohibited CLECs from commingling of local traffic on UNEs with special access trunks, but did not address circuits used exclusively to provide local interconnection service. Specifically, WCOM and AT&T contended that in its Supplemental Order the FCC addressed a different scenario than the ratcheting proposal offered by the CLECs in this proceeding.[399]

Qwest opposed WCOM's and AT&T's proposed commingling of interLATA and local traffic on the same trunk groups. Qwest pointed out that the FCC's *Supplemental Order* and *Supplemental Order Clarification* rejected commingling, because of concern about the potential for bypass of special access by using unbundled network elements. Qwest argued that the FCC was concerned that inter-exchange carriers would use local facilities priced at TELRIC rates to avoid the higher cost special access. Qwest also said that the FCC in fact specifically considered and rejected the configuration that WCOM and AT&T were seeking here.

Furthermore, Qwest said that the FCC was concerned that commingling would result in the "use of the incumbent's network without paying their assigned share of the incumbent's costs normally recovered through access charges" and a resultant reduction in the support for universal service. Qwest indicated that if WCOM and AT&T were permitted to commingle interLATA and local traffic, using spare special-access circuits for interconnection facilities, then the CLECs should be required to pay the federally tariffed special access rates.[400]

Proposed Issue Resolution: This issue is one of balancing efficiency against universal service. No participant denied that WCOM and AT&T's proposed commingling and ratcheting would result in a more efficient use of CLEC networks. However, the FCC, along with most state commissions, has identified universal service as an important regulatory goal. Access charges have been and continue to be an important mechanism for commissions in achieving the goal of universal service. Adoption of SGAT provisions that have the potential to undermine the effectiveness of the current pricing mechanism for special access requires a more comprehensive review of all Qwest pricing policies and their effect on universal service than has been accomplished in this proceeding.

It would appear that WCOM and AT&T have failed to distinguish their proposal from those about which the FCC has expressed concern and about which it may be expected to provide further guidance in the future. That failure is material here, given the standard that the FCC has applied to its examinations under Section 271:

> *Because the substantive interim rules we have adopted in our orders on this subject define the nature of SWBT's statutory obligations, SWBT's adherence to*

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[399] AT&T's Brief at page 57.

[400] Qwest's Brief at pages 71 and 72.

> *them cannot constitute a basis for finding noncompliance with the checklist. It would be quite unfair to a BOC applicant to deny it approval to compete in the long-distance market on the basis of conduct that, in other proceedings, we have explicitly authorized. For the section 271 process to work, potential BOC applicants must have a reasonable degree of certainty about what they need to do to bring themselves in compliance with statutory requirements, and they therefore need to be able to rely on our rules for guidance.*[401]

The WCOM and AT&T proposed SGAT ratcheting provisions should therefore not be adopted at this point.

There is a separate issue to resolve, i.e., the question of allowing the use of spare special-access circuits for interconnection. WCOM and AT&T should be permitted to exploit those economies. Qwest's proposal, to permit the use of spare special access facilities for local interconnection but with the stipulation that all circuits used are to be priced at special access rates, provides AT&T and WCOM the opportunity to enjoy the available efficiencies but protects the integrity of the pricing system.

4. Exchange Service Definition

AT&T proposed to alter the definition of "Exchange Service" to remove the words "as defined by Qwest's then-current EAS/local serving areas" in Section 4.22.[402] AT&T contended that the Commissions determine the boundaries of the local calling areas and that permitting Qwest to unilaterally modify this definition is inappropriate.

Qwest said that it recognizes that Commissions have historically managed the boundaries of flat-rated local calling areas.[403] However, Qwest asserted that the current wording was necessary to preclude any future dispute concerning the boundary.

Proposed Issue Resolution: Commissions have historically defined EAS/local service area boundaries. The adoption of Qwest's proposed wording would not change this condition. To make it clear to all parties that the commissions will continue to define the boundaries of EAS/local service area boundaries, it is appropriate that Qwest should delete the phrase "as defined by Qwest's then-current EAS/local serving areas"[404] in Section 4.22 of the SGAT.

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[401] *SBC Texas Order* ¶ 228.

[402] AT&T's Brief at page 58.

[403] Freeberg Rebuttal at page 42.

[404] AT&T Brief at page 58.

5. Including Collocation Costs in Reciprocal Compensation

AT&T argued that several aspects of Qwest's interconnection requirements, e.g., its SPOP proposal, its 50-mile trunk limit, and its restrictions on interconnection at tandems, served improperly to increase AT&T's reciprocal compensation obligations.[405] Later in its brief, AT&T also argued that Qwest should be required to compensate AT&T for some portion of its collocation costs incurred at or in connection with AT&T's points of interconnection, observing the Qwest traffic traverses AT&T equipment collocated at the Qwest central office and located at the AT&T central office.[406]

Qwest argued that the FCC mandates the use of incumbent costs as a proxy for CLEC costs; therefore, the request contravenes federal law.[407] It also argued that no factual basis had been laid to support this request.

XO Utah also raised the issue of compensation for its collocation costs.[408]

Proposed Issue Resolution: The AT&T and XO Utah argument violates the notion that transport and termination prices should be based on Qwest's costs, except where CLECs, which they have not done here, present studies showing that their own costs are different. There has been no argument that Qwest should have but did not include its own collocation or long-loop costs in calculating transport and termination prices. Rather AT&T appears to have argued that only CLEC costs should be included, as it did in the case of host/remote umbilicals, appearing to argue for general acceptance of Qwest's prices with selective adjustment for a narrow range of specific cost elements. This approach is not consistent with FCC requirements or sound economic theory.

AT&T's approach involves other problems as well. AT&T argued that CLECs who uses new or different technologies, as compared with what Qwest uses, should not be penalized by inefficient requirements that arise from the nature of Qwest's network design or operation. This argument is tantamount to saying that a CLEC should not suffer the loss of economies that its network design and operation bring to the marketplace. However, where, for example, long loops are one of the diseconomies that result, AT&T would ask much more than that Qwest be prohibited from reducing the net economies that it brings. Rather it would ask Qwest in effect to improve those net economies by mitigating the cost effects that arise from the CLECs own network design or operations. It reaches too far to argue that one should both be not stripped of the benefits of its self-selected approach and be compensated for its detriments.

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[405] AT&T Brief at pages 41 through 46.

[406] AT&T Brief at pages 54 and 55.

[407] Qwest Brief at 79, citing the *Local Competition Order*. ¶ 1085

[408] XO Utah Brief, starting at page 9.

AT&T's arguments about collocation costs also have some troubling aspects. The notion that reasonable collocation costs should be borne by other than the collocator is not a concept that finds support in any FCC rules, regulatory commission orders, or court opinions. Moreover, the notion raises inherent concerns about how one might go about allocating costs between securing access to UNEs and providing interconnection. There was no substantial debate about the connection between collocation and access to UNEs; there was little if any guidance about what methods would be needed to apportion costs. The lack of authority to support such recovery of collocation costs and the absence of any clear proposal for providing for fair recovery mean that it should not be adopted here.[409]VIII. Checklist Item 14 – Resale

[409] Parenthetically, the record in this proceeding does not contain substantial evidence to show that CLEC loops are longer, nor does it contain substantial evidence about the degree to which CLECs use collocation for interconnection, as opposed to UNE access. The following discussion of the issue provides the benefit of the doubt to AT&T on this question; however a different outcome on the merits of the issue would still leave the need for proper support for the factual foundation for the collocation-for-interconnection and long-loops arguments.

VIII. Checklist Item 14 – Resale

Background

Section 271(c)(2)(B)(xiv) of the Telecommunications Act of 1996 requires Qwest to make "telecommunications services …available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3)."[410] Under Section 251(c)(4), Qwest must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[411] In addition, Qwest may not place any "unreasonable or discriminatory conditions or limitations" on the services offered for resale. Section 252(d)(3) provides that the state commissions will "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing collection, and other costs that will be avoided by the local exchange carrier."[412]

Issues Resolved During This Workshop

The participants raised a number of issues regarding resale, primarily through discussions about the provisions of the SGAT. The following is a list of issues that were resolved in this workshop.

1. Description of Resale Obligation

AT&T raised two concerns[413] about the language in SGAT Section 6.1.1, which defines Qwest's resale obligation. AT&T argued that the language was inconsistent with the Act, and that the language appeared to limit the resale obligation to only those products identified in Qwest's tariff. WCOM also recommended a modification to this SGAT section in order to would permit a CLEC to purchase at a discount any service offered by Qwest at retail.[414] Qwest agreed to change Section 6.1.1 to accommodate the concerns raised by AT&T and WCOM.[415] Therefore, this issue can be considered closed.

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[410] 47 U.S.C. §271 (c)(2)(B)(xiv).

[411] 47 U.S.C. §251 (c)(4)(A).

[412] 47 U.S.C. §252 (d)(3).

[413] Wilson Direct at ¶244.

[414] Priday Direct at page 43.

[415] Rebuttal Testimony of Lori A. Simpson (hereafter Simpson Rebuttal) at page 4.

2. Qwest's Purchase of Services from CLECs

WCOM,[416] AT&T,[417] and McLeodUSA[418] objected to SGAT Section 6.1.2, which defined the obligations of CLECs to resell their services to Qwest. These companies noted that the obligations of the CLECs and the ILECs are not identical, and that Qwest must negotiate independently with the CLECs to establish rates for services. Qwest agreed to modify the SGAT to satisfy these comments.[419] Therefore, this issue can be considered closed.

3. Restrictions on Resale

AT&T commented that SGAT Section 6.1.3 placed unreasonable and discriminatory restrictions on the resale of certain Qwest services.[420] Qwest's SGAT matrix noted consensus on this issue, but no discussion was offered by Qwest to identify the negotiated solution. However, Qwest apparently adopted AT&T's proposed SGAT language, as it is included in the SGAT (WS1-QWE-TRF-1-4) filed after this workshop. Therefore, this issue can be considered closed.

4. Training Materials

AT&T[421] noted that SGAT Section 6.2.1 incorporated by reference certain training materials, and suggested that Qwest provide copies of these materials. Qwest agreed to do so, and this issue was closed.

5. Resale to the Same Class of End User

McLeodUSA commented that the provisions of SGAT Section 6.2.2 were inconsistent with the Act and the FCC's rules.[422] However, no explanation was given for this comment and Qwest noted that the FCC has determined that reseller CLECs may not make Qwest's telecommunications services available to a different category of end user where Qwest makes that same service available to only a specific category of retail end user.[423] Qwest has also made substantial changes to this section. Therefore, this issue can be considered closed.

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[416] Priday Direct at page 44.

[417] Wilson at ¶245.

[418] Response Testimony of Scott A. Jennings on behalf of McLeodUSA at WS1-MCL-SAJ-2.

[419] Simpson Rebuttal at page 6.

[420] Wilson at ¶246.

[421] Wilson at ¶247.

[422] WS1-MCL-SAJ-2

[423] Simpson Rebuttal at page 42.

6. Consecutive Promotional Offerings

WCOM noted that in SGAT Section 6.2.2.1, promotional offerings of 90 days or less are available for resale, but without the wholesale discount. WCOM[424] argued that by running promotions every 90 days, Qwest could avoid its wholesale discounting obligations. WCOM suggested modifications and stated that this section had been thus modified in Arizona.

AT&T[425] also requested that language be added to Section 6.2.2.1 to more closely follow the language of Qwest's legal obligation. This section was discussed at the workshop[426] and ultimately resolved among the parties as Qwest indicated that consensus had been reached on the language.[427] Therefore, this issue can be considered closed.

7. Market Trials Not Available For Resale

McLeodUSA asked several questions about SGAT Section 6.2.2.2 and its restrictions on the resale of market trials.[428] In response, Qwest noted[429] that its market trials of telecommunications services are not provided "for free" to end users; there is a monthly charge. It also noted that the decision about whether the trailed services will be made available to all end users is made after the conclusion of a market trial. McLeodUSA did not respond to Qwest's explanation in any fashion; therefore, this section is considered closed.

8. 911 Not Available For Resale

WCOM[430] and AT&T[431] both commented on the availability of N11 service for resale. SGAT Section 6.2.2.4 specified that 911 service is not available for resale, but did not address the availability of N11 (e.g. 311,411,611) for resale. WCOM offered suggested language that had been modified to its satisfaction in Arizona. Qwest indicated that consensus had been reached on this language.[432] Therefore, this issue can be considered closed.

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[424] Priday at page 44.

[425] Id. at ¶250.

[426] Transcript of 10/3/00 at 173-176.

[427] Qwest SGAT Matrix (Exhibit 1) of 12/8/00 at page 2.

[428] WS1-MCL-SAJ-2

[429] Simpson Rebuttal at page 42.

[430] Priday at page 45.

[431] Wilson at ¶251.

[432] Qwest SGAT Matrix.

9. Restrictions on Contract Service Arrangements

AT&T noted that SGAT Section 6.2.2.7 included language that could restrict retail offerings or the application of proper discounts to contract service arrangements (CSAs).[433] In addition, AT&T also argued that long term CSAs with strict penalty provisions for early termination could also be improper restrictions on resale.

McLeodUSA asked whether early termination charges would be waived if the customer upgrades to a higher service from the service provided under the CSA.[434] Qwest indicated that termination charges would be waived if the end user meets specific criteria.[435]

During Workshop 1, all parties agreed to the language that was included in Exhibit WS1-QWE-LAS-1.[436] Therefore, this issue can be considered closed.

10. Grandfathered Services

SGAT Section 6.2.2.8 included language that withdrew "Grandfathered Services" from resale "except to *existing* end-users of the grandfathered service." AT&T stated that this restriction violated the FCC's First Report and Order, ¶958. [437] Qwest agreed in the Arizona 271 workshop to modify this section of the SGAT to clarify the language.[438] Qwest indicated that consensus was reached on this section.[439] Therefore, this issue can be considered closed.

11. Aggregation of Optional Features

McLeodUSA stated that CLECs should be permitted to "aggregate" optional features across multiple blocks within a single central office switching system, to the extent this is technically feasible (SGAT Section 6.2.2.9.1).[440] Qwest replied that its switches are not generally capable of providing use of Centrex features provisioned from one Centrex common block to another Centrex common block.[441] McLeodUSA offered no reply to Qwest's response on this issue, which can be considered closed.

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[433] Wilson at ¶252, 253.

[434] WS1-MCL-SAJ-2

[435] Simpson Rebuttal at page 43.

[436] Transcript of 10/3/00 at pages188-189.

[437] Wilson at ¶254.

[438] Simpson Rebuttal at page 25.

[439] SGAT Matrix at page 2.

[440] WS1-MCL-SAJ-2.

[441] Simpson Rebuttal at page 44.

12. Separate Centrex Service

McLeodUSA asked about the meaning of the language in SGAT Section 6.2.2.9.2. [442] Qwest explained that "…Centrex station lines from multiple central office switching systems within the same Qwest wire center and provisioned to the same end use location are charged for as separate Centrex service…"[443] There was no further discussion of this section. Therefore, this issue can be considered closed.

13. Private Line Service

McLeodUSA commented that if private line service for special access is offered at retail, it must be made available for resale.[444] Qwest noted that it is available for resale as SGAT Section 6.2.2.10 provides that "Private line service used for Special Access is available for resale but not at a discount".[445] There was no further discussion of this section. Therefore, this issue can be considered closed.

14. Megabit Service Resold From Interstate Tariff

AT&T questioned why Qwest requires CLECs to employ an interstate tariff for resale of Megabit services rather than an intrastate tariff[446] (SGAT Section 6.2.2.11). Qwest agreed to delete this section of the SGAT, which would have the effect of making Megabit available for resale from whatever Qwest tariffs, catalogs, or price lists that include Megabit as a retail telecommunications offering.[447] Therefore, this issue can be considered closed.

15. Forecasts

SGAT Section 6.2.5 requires the CLEC to provide Qwest with annual two-year forecasts, within 90 days of requesting service. WCOM, AT&T and McLeodUSA all questioned this provision. WCOM argued that a CLEC should not be required to provide forecasts to its competitors but should be able to generally estimate its use of OSS applications to allow Qwest to accomplish its planning.[448] Qwest replied that only the CLECs can forecast their resale of both previously

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[442] WS1-MCL-SAJ-2.

[443] Simpson Rebuttal at page 44.

[444] WS1-MCL-SAJ-2.

[445] Simpson Rebuttal at page 45.

[446] Wilson at ¶255.

[447] Simpson Rebuttal at page 26.

[448] Priday at page 46.

uninstalled services and existing services and thus Qwest must have the forecasts to plan for future network and system requirements.

AT&T suggested that the section be modified to make it reciprocal (i.e., that Qwest must supply its forecasts to the CLECS).[449] McLeodUSA also questioned the need for the amount of information requested and suggested that Qwest should limit information to the absolute minimum to protect business plans.[450] Qwest offered SGAT language in its rebuttal to meet WCOM's and McLeodUSA's suggestions[451], but in a later workshop session, Qwest agreed to delete the section entirely.[452]

This issue can be considered closed.

16. Numbering Obligations

SGAT Section 6.2.6 delineates the CLEC's numbering obligations: The CLECs may not reserve blocks of telephone numbers. Both AT&T and McLeodUSA commented on this section: AT&T suggested that it be deleted[453] and McLeodUSA commented that the CLECs should be treated equally with Qwest. Qwest proposed a change in the Arizona 271 workshop, and proposed the same change here:

> *6.2.6 CLEC may not reserve blocks of Qwest telephone numbers except as allowed by a Federal Communication Commission order. ~~Tariffs.~~*

This issue can be considered closed.

17. CLEC Payment for Unbranding

WCOM argued that SGAT Section 6.2.9 "…obligates the CLEC either use Qwest's branding or pay to have CLEC's branding applied, even if CLEC chooses to have no branding".[454] WCOM argues that if it is technically feasible to order operator services and directory assistance with branding, it should be feasible to order those services without branding. Qwest argued that the FCC contemplated that the CLEC would have to pay for either unbranding or rebranding, and rejected WCOM's suggestion.[455]

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[449] Wilson at ¶258.

[450] WS1-MCL-SAJ-2

[451] Simpson Rebuttal at page 13.

[452] Transcript of 2/26/01 at page 104.

[453] Wilson at ¶259.

[454] Priday Direct at page 46.

[455] Simpson Rebuttal at page 14.

AT&T commented that this section as worded diminishes the CLEC's right to obtain unbranded and rebranded services and transfers the burden to the CLEC to seek such branding.[456] To provide clarity, Qwest agreed to a change in the SGAT language in Arizona, and offered the same language in this proceeding. The section now provides[457]:

> *6.2.9 If Qwest provides and CLEC accepts Qwest's directory assistance service or operator services for CLEC's resold local exchange service lines, such directory assistance and operator services may be provided with branding as provided in this Agreement in Sections 10.5 for directory assistance service, and 10.7 for operator services.*

This issue can be considered closed.

18. Primary Interexchange Carrier (PIC) Assignments and Slamming

Section 6.2.10 of the SGAT concerns the designation by the CLEC of PIC assignments and seeks to indemnify Qwest against slamming claims made against the reseller caused by the reseller. AT&T commented that this section should be made reciprocal or deleted.[458] Qwest agreed to make changes and AT&T agreed that the language answered its concerns.[459] Therefore, this issue can be considered closed.

19. Nonpayment Claims

WCOM commented that Section 6.2.12 "…allows Qwest to terminate resale service to CLEC for non-payment of charges; however, this section does not address circumstances in which CLEC is properly disputing such charges".[460] WCOM offered language changes in its testimony and

[456] Wilson at ¶260.

[457] Frozen SGAT.

[458] Wilson at ¶261.

[459] Simpson Rebuttal at page 27.

[460] Priday Direct at page 47.

Qwest countered with changes to sections 5.4.2, 5.4.3 (covering CLEC payment of bills from Qwest for services resold by CLEC) and 6.2.12.[461]

McLeodUSA also commented that Qwest should not be able to avoid responsibility if it wrongfully discontinues service and that the discontinuance should at least be lawful or proper[462]. Qwest agreed to add the word "properly" to modify this section.[463] Therefore, this issue can be considered closed.

20. Availability of Resold Services

AT&T noted that Section 6.2.14 limits Qwest's resale obligation "only" to locations in which "facilities currently exist", thus providing no ongoing obligation if new facilities are deployed.[464] Qwest agreed to delete the word "only" to satisfy AT&T's concerns.[465]

McLeodUSA also commented on this section but the language it quoted did not match the text from the SGATs.[466] McLeodUSA did not follow up on its question/comment in any way. Therefore, this issue can be considered closed.

21. Limitations on Resold Services

AT&T expressed concern that the SGAT Section 6.3.1 reference to "Exhibit A" as containing the list of services available for resale could limit the available services inappropriately. In addition, because the exhibit lists the discount, it created uncertainty as to the price at which unlisted services would be available.[467] AT&T raised a similar concern about the Exhibit A reference in SGAT Section 6.3.7. Qwest changed SGAT Section 6.3.1 to address AT&T's availability and pricing concerns.[468] Therefore, this issue can be considered closed.

[461] Simpson Rebuttal at page 16.

[462] WS1-MCL-SAJ-2.

[463] Simpson Rebuttal at page 47.

[464] Wilson at ¶262.

[465] Simpson Rebuttal at page 27.

[466] WS1-MCL-SAJ-2.

[467] Wilson Direct at ¶ 264.

[468] Frozen SGAT.

22. Customer Transfer Charges

McLeodUSA questioned why customer transfer charges should apply under SGAT Section 6.3.2 when transferring services to a CLEC.[469] Qwest responded that these charges cover processing orders to transfer end users from one local service provider to another. This explanation is reasonable; McLeodUSA did not respond to it at hearings, nor did it brief this issue, which therefore can be considered closed.

23. Information for Billing CLEC Customers

AT&T requested that Qwest change SGAT Section 6.3.5 in order to obligate Qwest to provide CLECs with the information necessary for CLECs to bill their end users.[470] Qwest's frozen SGAT filing incorporates the language requested by AT&T. Therefore, this issue can be considered closed.

24. Application of Wholesale Discount Miscellaneous Charges

AT&T asked that Qwest change SGAT Section 6.3.6 to make clear that the wholesale discount applies to miscellaneous charges Qwest makes to CLECs.[471] WCOM sought clarification about the nature of the charges that could be made, how they could be made, and what rights Qwest might have to change them unilaterally.[472] Qwest's frozen SGAT filing contains a change that provides the clarification sought by AT&T. This language also addresses WCOM's concern by making it clear that the charges are limited to those applicable to Qwest's retail customers. The change includes a sentence stating that the charges include those provided for in the applicable Qwest tariff. Therefore, this issue can be considered closed.

25. Notice of Changes to Available Services

McLeodUSA asserted that there should be a notice when the state commission makes additional services available for resale. SGAT Section 6.3.7 merely provides for adding such services to those available for resale under the SGAT.[473] As Qwest noted, the additions or changes at issue would arise from a commission order, which would be issued pursuant to the notice requirements deemed appropriate by the commission issuing it. Therefore, there need not be a separate notice provision in the SGAT. McLeodUSA did not argue that such notice would not suffice, nor did it brief this issue, which, therefore, can be considered closed.

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[469] WS1-MCL-SAJ-2.

[470] Wilson Direct at ¶ 265.

[471] Wilson Direct at ¶ 266.

[472] Priday Direct at page 48.

[473] WS1-MCL-SAJ-2.

26. Billing Changes

AT&T sought a change to SGAT Section 6.3.8, in order to make it clear that billing changes resulting from Commission orders should apply from the effective date of Commission-ordered change, not from the time when Qwest changes its billing systems to reflect them.[474] Qwest's frozen SGAT language filing reflects a change that responds fully to AT&T's concern. Therefore, this issue can be considered closed.

27. Use of Commission-Approved Rates

AT&T wanted to remove a phrase from SGAT Section 6.3.9 to make it clear that Qwest would only charge rates that have been approved by the Commission in the case of any change.[475] Qwest's frozen SGAT makes the deletion that AT&T requested. Therefore, this issue can be considered closed.

28. Applying the Wholesale Discount to Non-Recurring Charges

AT&T sought a change to SGAT Section 6.3.10 to make it clear that the discount applies to non-recurring charges.[476] Qwest's frozen SGAT makes a change that would apply the discount to any related service to which the discount applies. Therefore, this issue can be considered closed.

29. Incorporating Ordering Information By Reference

SGAT Section 6.4.2 required that CLECs provide ordering, installation, repair, and maintenance information provided for in standard Qwest procedures, as they are described in the IRRG, which the section said were available on an identified web site. AT&T asked that the documents referred to by reference be provided for examination, or, at least, that Qwest update the web site referred to in the section.[477] Qwest corrected the applicable web site address, but argued that the details of these procedures need not be reviewed as part of these proceedings.[478] Discovery on this matter was available to AT&T. Absent a specific objection to the content of the material, and absent pursuit of this issue in briefing, the issue should be considered closed. However, AT&T is not foreclosed from arguing in the workshop on general SGAT terms and conditions that there needs to be adequate provision in the SGAT to assure that documents incorporated by reference are not intended to modify the mutual obligations set forth in the SGAT.

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[474] Wilson Direct at ¶ 269.

[475] Wilson Direct at ¶ 270.

[476] Wilson Direct at ¶ 271.

[477] Wilson Direct at ¶ 273.

[478] Simpson Rebuttal at page 31.

30. Parity Standard Definition

AT&T wanted to clarify SGAT Section 6.4.3 to make it clear that the parity benchmark is not limited to Qwest itself, but includes any subsidiaries, affiliates, or anyone to whom Qwest directly provides service.[479] Qwest's frozen SGAT includes a change to this section, which change the parties have accepted in other state workshops as a satisfactory resolution of the AT&T concern.[480] Therefore, this issue can be considered closed.

31. Billing End Date for Resold Services

This issue concerns cases where a customer taking resold service from a CLEC wants to end that resale relationship with the CLEC. AT&T wanted to clarify SGAT Section 6.4.5 to make it clear that CLECs would be responsible for payment to Qwest only through the last date that the CLEC is reselling services to a customer who is ending its resale relationship with that CLEC.[481] Qwest's made a change to this section, which change the parties have accepted in other state workshops as a satisfactory resolution of the AT&T concern.[482] Qwest made a change that addresses this issue.[483] Therefore, this issue can be considered closed.

32. Proofs of Authorization to Change Providers

AT&T raised a concern that SGAT Section 6.4.7, which refers to Section 5.3 had the effect of eliminating a proof of authorization method specifically allowed by the FCC. AT&T also objected to the application of a $100 charge (under Section 5.3.2) in the event that a CLEC failed to produce an authorization of the type identified in the SGAT.[484] Qwest changed the SGAT to allow the method in question (i.e., any other "state-enacted verification procedure for intrastate orders"). Qwest, however, declined to remove the $100 charge, which it defended as a "modest" fine to reduce slamming.[485] While AT&T's comments claimed that the charge was not consistent with FCC rules, it did not identify those rules either in its comments or its brief. The change that Qwest made to the SGAT section and failure of AT&T to pursue the issue of the $100 charge and its consistency with FCC and state rules indicate that this issue can be considered closed.

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[479] Wilson Direct at ¶ 274.

[480] Simpson Rebuttal at page 32.

[481] Wilson Direct at ¶ 275.

[482] Simpson Rebuttal at page 33.

[483] Simpson Rebuttal at page 35.

[484] Wilson Direct at ¶¶ 276 through 278.

[485] Simpson Rebuttal at pages 34 and 35.

Issues Remaining in Dispute – Resale

1. Indemnification

AT&T argued that the SGAT did not require Qwest to take an appropriate share of responsibility for the harm that customers of CLEC resellers suffer when Qwest fails to meet applicable performance standards. AT&T sought an indemnity provision that would provide for parity of treatment between Qwest retail customers and those served by CLECs who resell Qwest retail services. AT&T justified this request by citing the power of state commissions to enforce other provisions of state law in reviewing SGATs (47 U.S.C. § 252(f)(2)) and the obligation to treat wholesale and retail customers at parity (47 U.S.C. § 251(c)(4)(B)).[486] AT&T therefore recommended that the SGAT be changed to incorporate the following language.[487]

> *6.2.3 QWEST shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that QWEST provides these services to others, including subsidiaries, affiliates, other Resellers and end users. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding resale are subject to this requirement. In addition, QWEST shall comply with all state wholesale and retail service quality requirements.*
>
> *6.2.3.1 In the event that QWEST fails to meet the requirements of Section 6.2.3, QWEST shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.[488]*
>
> *Qwest shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail service quality standards in the provision of resold services.*

Qwest argued that subjecting it to such liability was not a requirement of the resale checklist item, but did agree to accept a more limited form of liability, which it offered by means of SGAT Section 6.2.3.1.[489] That section provides as follows:

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[486] AT&T Brief at page 66.

[487] Wilson Direct at ¶ 256.

[488] AT&T reserves the right to address its concerns regarding Section 5.9 (Indemnity) of the SGAT in the appropriate multi-state workshop on General Terms and Conditions of the SGAT.

[489] Qwest Brief at pages 83 and 84.

6.2.3.1 Qwest shall provide service credits to CLEC for resold services in accordance with the Commission's retail service requirements that apply to Qwest retail services, if any. Such credits shall be limited in accordance with the following:

a) Qwest's service credits to CLEC shall be subject to the wholesale discount;

b) Qwest shall only be liable to provide service credits in accordance with the resold services provided to CLEC. Qwest is not required to provide service credits for service failures that are the fault of the CLEC;

c) Qwest shall not be liable to provide service credits to CLEC if CLEC is not subject to the Commission's service quality requirements;

d) Qwest shall not be liable to provide service credits to CLEC if CLEC does not provide service quality credits to its end users.

e) In no case shall Qwest's credits to CLEC exceed the amount Qwest would pay a Qwest end user under the service quality requirements, less any wholesale discount applicable to CLEC's resold services.

f) In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident.

AT&T responded to this Qwest proposal.[490] It argued that the Qwest proposal would not make CLEC customers whole and it would provide no remedy at all where there were no retail service quality rules applicable to CLECs. AT&T was concerned also that a CLEC would be responsible under Qwest's proposal for making up the difference between what Qwest would pay the CLEC and what the CLEC would have to pay its end user customer (Qwest would apply the wholesale discount to the payments it must make to CLECs) if a state makes CLECs responsible for retail service quality payments. AT&T also argued that reliance upon Post Entry Performance Plan (PEPP, or what AT&T termed "PAP") payments is misplaced, because they do not address harm to the reseller CLEC's reputation, nor do they address parity of recovery opportunities between Qwest's end users and the end users of CLECs who are reselling Qwest services. AT&T therefore continued to believe that its original proposed language should be adopted.

Qwest responded to several of AT&T's specific concerns about Qwest's proposed language.[491] Qwest first stated that it should be permitted to limit its payment to CLECs to what it charged CLECs for the underlying resale service less any applicable wholesale discount. Qwest said that it has no control over what CLECs charge their end users; therefore, undertaking liability for an

[490] AT&T Brief at pages 67 through 69.

[491] Qwest Brief at pages 84 and 85.

unknown sum over which it has no control is unreasonable and subject to abuse. Qwest also argued that its duty of care and its commercial relationship are to and with the CLEC, not the end user of the CLEC. Qwest also defended the portion of its recommendation [Section 6.2.3.1(e)] that precludes duplicate reimbursement, which may result from any applicable PEPP payments that Qwest must make.

Proposed Issue Resolution: The general conclusions about indemnity, which were addressed in the discussion the issue in the context of the Interconnection checklist item apply here to a significant degree. Except as particularly discussed below, the general indemnity issues that AT&T's requested language addresses can, like those associated with Interconnection, be addressed in the workshop session that will cover general SGAT terms and conditions.

Thus, Qwest's elimination of the extremely broad and inadequately delimited liabilities, in favor of an approach that places the issue in the strict context of state-imposed standards for failing to meet retail service standards is appropriate. The reason is that provisions for such payments consist of or are akin to tariff provisions. Such provisions form the foundation upon which the concept of resold services is grounded. Even where they may be cast as penalties, payments to customers for failure to meet retail service standards essentially amount to rebates of a portion of the amounts that customers pay under tariffs or other established methods by which states allow LECs to charge for local service.

AT&T begins by focusing on parity of treatment between Qwest and CLEC customers served by resale of Qwest services. Its arguments that spring from principles founded in the parity provisions of 47 U.S.C. § 251(c)(4)(B) and the ability of states to enforce state requirements under 47 U.S.C. § 252(f)(2) are on point. However, AT&T expanded upon those arguments include notions such as harm to CLEC reputation, which are far afield from these other, legitimate considerations. Therefore, to the extent that AT&T's proposal is intended to address damages to AT&T per se, they are not relevant here and they must be dealt with in the upcoming treatment of general terms and conditions.

Recognizing, as Qwest does in its brief, that the issue that is relevant here arises from the peculiar nature of the treatment of payment for services applicable in the resale context brings us a major step closer to resolution of this issue. The parity of treatment that is required is between wholesale customers (the CLEC, not its customers) and Qwest retail customers. AT&T incorrectly introduces the concept of parity between its end user customers and Qwest's end user customers. The Act and the FCC do not seek equal treatment among all end users, by whomever they may be served. Far from it; the point of competition is to give all carriers a fair opportunity to distinguish themselves from their competitors. We must return to the concept behind service-quality payments, which is to get back to the customer a defined portion of what the customer has paid for, but not gotten. The proper comparison is between what each type of customer to be compared has paid. The Qwest end user has paid retail rates; the CLEC as customer has paid retails rates less any applicable discount.

Therefore, it is proper to take any applicable discount off the amount that Qwest should pay its CLEC customer. The argument that this leaves the CLEC end user worse off, apart from being of questionable relevance, is also not necessarily true. It only becomes true if a CLEC decides not

to make up the difference from the margin it charges on top of the wholesale rate it has paid Qwest. After all, Qwest must make up the difference between its cost and its margin; the CLEC has an equal opportunity and at roughly equivalent cost to itself to do the same. To hold otherwise is less a matter of making two different kinds of end users equally whole and it is much more a matter of preserving a CLEC profit opportunity.

However, just as AT&T's solution concerns itself inappropriately with the relationship between the CLEC and its customers, so does that of Qwest. In particular, Sections 6.2.3.1(c) and (d) of Qwest's proposal raise questions. The first of these provisions exempts Qwest from making payments to CLECs not subject to the requirements; the second exempts Qwest if a CLEC does not provide credits to its customers. The other aspects of CLEC payments to Qwest for resold services do not depend upon what the CLEC charges or credits to its customers. As this aspect of payments and credits is founded upon the same basis, neither should it. It should, however, be emphasized that what is at issue here are credits that a state provides for retail customers. As discussed above, fines or incentives and penalties that do not involve payments or credits to customers are a function of the more general discussion of indemnity that is to come in the general SGAT terms and conditions workshop.

Finally, it is proper for Qwest to provide protection in the event that PEPP payments clearly include payment to CLECs or their customers for state quality "misses." There is no sound policy for making Qwest pay twice for the same thing; nor is it at all clear that PEPP payments will necessarily not include such items. To the extent that they eventually may do so, Qwest should have explicit SGAT recognition that Section 6.2.3.1 is not intended to duplicate them. To the extent that they eventually do not, inclusion of 6.2.3.1(d) will cause no harm to anyone.

Therefore, the SGAT should include Qwest's language for Section 6.2.3.1, except that subsections (c) and (d) thereof should be eliminated.

2. Marketing During Misdirected Calls

AT&T argued that, in limited circumstances, Qwest should not have the opportunity to market or sell services to CLEC customers, without first asking them. Specifically, AT&T would prohibit such communications with CLEC customers who have mistakenly contacted Qwest business or repair offices.[492] To this end, AT&T proposes the following SGAT language:

[492] AT&T Brief at pages 69 through 72.

> *6.4.1 CLEC, or CLEC's agent shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local exchange service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party seeking such information.*

AT&T defends this language on the grounds that there exists a substantial state interest in opening local telecommunications markets and in preventing anticompetitive behavior that will threaten competition. AT&T believes that its limit on Qwest communications to misdirected call, which can be determined through minor changes to the scripts that call center representatives use to manage communications with telephone callers. AT&T also cites limits on confidential or proprietary information, which it believes Qwest necessarily receives when taking a call from a CLEC customer.[493]

Qwest called the AT&T proposal an improper restriction on Qwest's rights of commercial free speech, citing a number of precedents.[494] Qwest, however, did not cite any case that would provide constitutional protection to engage in speech otherwise protected under the First Amendment, where the right to such speech has been contracted away. Yet that is precisely the context that is at issue here. The U. S. Congress has clearly decided that there is a substantial public interest to be served by opening the local exchange market to competition. That same body, buttressed by the pronouncements of the FCC, has decided that opening the market requires that ILECs, which control bottleneck facilities, act in effect as contractors or vendors to CLECs in making network components and services available. For this reason, the Telecommunications Act of 1996 envisions, and in fact it creates, methods to produce forced contracts between ILECs and CLECs, whether in the form of bilateral interconnection agreements or broadly available SGATs.

These agreements generally must envision the kind of relationship that would exist in an environment where mutual advantage brought a vendor and a customer together. Otherwise, there is no effective method for bringing about the market opening that the Congress seeks. It goes without saying that entities that sometimes compete with each other sometimes put aside what divides them, in order to gain mutual advantage. In a normal commercial setting, a vendor is perfectly free to waive its otherwise existing speech rights in order to gain other forms of advantage. We all know that the same entities whose branded products appear on a supermarket

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[493] 47 U.S.C. § 222 (a) & (b).

[494] Qwest Brief at pages 86 through 91.

shelf often stand next to products that it brands for others (often the supermarket owner itself). It is inconceivable to imagine a vendor voluntarily entering such a contract, then successfully suing to keep the contract in force in all respects except for the one preventing it from telling the supermarket's customers that what it bottled for the supermarket is inferior to what it bottled under its primary brand.

The only problem we have in extending that analogy here is that we do not know what kind of agreements might have been reached in a competitive telecommunications market. Congress has in fact already told those who seek to understand its intent that there would not be such contracts absent an obligation to force carriers to enter them and to enter them under terms that an independent arbitrator, not they, deem appropriate.

The commercial speech issue is not in this regard distinguishable from other types of constitutional issues. We can take it for granted that the Congressional finding underlying the Telecommunications Act of 1996 is that there is a compelling public interest in requiring the adoption of contracts and similar obligations that both serve to open the telecommunications market to competition and to require ILECs to act as one would f there did exist an incentive to voluntarily enter into obligations to serve those who would be competitors.

There is a peculiar irony in the fact that this Qwest claim arises in the context of one of the true incentives (in terms of self interest) that Congress did create in the Act. The irony is that this is a case that is all about the elimination of a lawful prohibition on Qwest's business operations and opportunities (i.e., the provision of interLATA telecommunications services). At the same time that Qwest asks for the elimination of that prohibition, which Congress could have freely left in place, it says that the price that Congress asks for that elimination is too high insofar as it enables a third party (such as an arbitrator or a public service commission) to tell Qwest what it thinks would represent, as between Qwest and CLECs, a reasonable relationship for purpose of opening Qwest's bottleneck control of network facilities and services.

We must also be mindful of the fact that the issue here is not limiting Qwest from providing product and service information to customers who are seeking it. The section only applies to calls from customers who are seeking other information. It permits inoffensive efforts by Qwest to determine if the customer does in fact want such information, provided that: (a) they do not detract from the prompt, efficient, and good faith effort to act in accord with the requirements of Section 6.4.1, and (b) Qwest acts in accordance with the customer's expressed intent in response to those efforts.

This Qwest argument, quite simply, tries too hard. Given (a) the obvious Congressional determination about the importance of opening the market, (b) the reasonable relationship between market opening and "forced" contracts, (c) the particular context in which this issue is here decided (i.e., the Section 271 checklist), and (d) the fact that Qwest is not limited in any case from discussing its products and services from those seeking information about them, it is sufficient to determine that the kind of term or condition being sought is a reasonable approximation of what one might expect in a non-forced contract situation, there can be no doubt that precluding a vendor from marketing or selling in direct competition with the end user customer of its wholesale customer is reasonable, particularly when limited to the case of

misdirected calls. Therefore, the language that AT&T proposes for Section 6.4.1 is generally appropriate for inclusion in the SGAT.

3. Special Contract Termination Charges

InTTec presented evidence that Qwest does not enforce termination charges when its own end users upgrade service in manners that go beyond the contract provisions. Because InTTec cannot offer comparable concessions (since the right to payments runs to Qwest), it claimed to have difficulty in competing for such customers. SGAT Section 6.2.2.7 addresses those charges in the resale context. InTTec asked that Qwest be required to provide relief of termination cost liability and waive termination charges for CLECs as resellers.[495] McLeodUSA made the same argument.[496]

Qwest did not address the InTTec or McLeodUSA argument in testimony or briefs. However, it did comment on a related, but distinct issue that AT&T raised.[497] Part of Qwest's testimony there does illuminate this issue. Qwest rebuttal witness Simpson said:[498]

> *If an end user chooses to terminate its service with Qwest, whether to switch to a reseller or for some other reason, it may be subject to reasonable and nondiscriminatory termination liabilities if they were part of the original terms of the CSA agreed to by the end user.*

The AT&T issue was generally addressed in its and Qwest's testimony,[499] but as the discussion lacked specific recommended solutions, it appears that AT&T and Qwest may have considered the issue to be resolved on the basis of what happened at the Arizona workshops. Neither Qwest nor AT&T briefed the issue here. InTTec did not participate in the Arizona workshops. At any rate, the unresponded to InTTec argument, which McLeodUSA made as well, form the only basis available on the record for deciding this issue.

Proposed Issue Resolution: Section 252(d)(3) provides that state commissions will "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested." This provision should be read as requiring rates for resale to be set on the basis of what Qwest actually charges. It is to be expected that Qwest's charges will generally be in accord with tariffs (or the like) or the specific terms of special contract arrangements. However, it should not be assumed that this equivalency would necessarily exist in all situations.

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[495] Direct Testimony of D. J. Farmer by Affidavit for Visionary Communications Inc., and IntTTec, Inc., On Checklist Items 1, 13 and 14 in the Wyoming Proceeding of the 6-State Collaborative Process (271-Workshop 1)

[496] Exhibit WS1-MCL-SJ-2.

[497] AT&T raised its issue in the Wilson Direct Testimony at ¶¶ 252 and 253.

[498] Simpson Rebuttal at page 23.

[499] Wilson Direct at ¶ 253 and the Simpson Rebuttal at page 23.

There may be cases where Qwest by custom and in accord with commission requirements makes certain concessions. The waiver of termination charges when a customer makes a corresponding or greater commitment to new or revised services is a case where such concessions are likely. It will often be logical for any business to waive a guarantee of certain levels of payment when they are replaced with a stream of payments likely to be higher.

Where Qwest's "rates charged to" its end users under special contracts generally include concessions in the upgrade situations of concern to InTTec, Qwest should not use a "to the letter" contract interpretation to disadvantage CLECs where its custom would not be to do so for its own end users. Qwest witness Simpson observed that the kinds of termination liabilities that are appropriate are those that are nondiscriminatory. It would be discriminatory and anticompetitive for Qwest to apply them differentially so as to make it more difficult for CLECs to compete for customers. However, care must be taken not to create for CLECs a broad right to avoid the legitimate and even-handed application by Qwest of termination charges. The following addition at the end of SGAT Section 6.2.2.7 will accomplish this purpose:

> *Where a CLEC seeks to continue serving a customer presently served through a resold Qwest CSA, but wishes to provide such service through alternate resale arrangements, Qwest shall provide the CLEC the same waivers of early termination liabilities as it makes to its own end users in similar circumstances. In any case where it is required to offer such a waiver, Qwest shall be entitled to apply provisions that provide Qwest substantially the same assurances and benefits that remained to it under the resold agreement as of the time it is changed.*

Qwest should incorporate a provision to this effect in the section.

4. Electronic Interface for Centrex Resale

In its brief[500], the Wyoming Consumer Advocate Staff argued that Qwest's failure to provide an electronic interface for the resale of Centrex service (an issue that was originally raised by McLeodUSA) provides evidence "…that resale is not working in Wyoming to an extent that the Wyoming Commission can find Qwest in compliance with the checklist criteria". McLeodUSA witness Scott Jennings testified at the workshop that the lack of electronic interface for Centrex created a hardship for McLeodUSA "… in that that creates delays, lost paperwork, general overall difficulties with the processing of orders".[501] On cross-examination, Qwest's attorney attempted to elicit testimony from the witness about a specific study and Iowa status reports involving the electronic interface system. The witness was unaware of these documents and Qwest ultimately promised to provide the reports referred to in cross-examination.[502]

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[500] Post-Workshop Brief of the Consumer Advocate Staff on Issues Relating to Interconnection, Collocation, Local Number Portability, Resale and Reciprocal Compensation, at 9.

[501] Transcript of October 4, 2000 at 275.

[502] Transcript of October 4, 2000 at 280-284.

The participants failed to follow up on a commitment made to identify the relevant Iowa reports addressing progress. McLeodUSA's witness specifically said that he was unaware of progress being made in Iowa to address the issue there. McLeodUSA did not brief this issue; McLeodUSA in fact filed no brief at all. No reference was made to the obligations for electronic processing requirements, performance standards, or other relevant aspect of the ROC PID as they concern the electronic flow-through requirements or the provisioning intervals for CENTREX. It is to be expected that the PID deals with such issues. Thus, the record contains only enough information to determine that the issue has been raised before the Iowa Commission and that efforts have been made to address it. There is not enough information to conclude that Qwest even denies electronic flow through of CENTREX orders by McLeodUSA, let alone that it is required to provide it, or that failure to do so leads to competitive problems in securing such services on a retail basis from Qwest. Relevant questions that the participants have not addressed include:

> Whether the PID requires electronic flow through
>
> Whether in its absence, the PID requires performance at levels that either provide (with respect to issues that can be addressed through electronic interface, such as pre-ordering, ordering, provisioning, maintenance and repair) parity with retail or a meaningful opportunity for CLECs to compete
>
> What the record in Iowa would show about progress in resolving the issues raised there.

The arguments relied upon depend essentially entirely upon the statements of a McLeodUSA witness, which addressed none of these questions. It may be that that the 10-day comments on this report will shed more light on the facts surrounding this issue; should they not, then the Commissions should not find that the evidence relied upon supports a conclusion that Qwest here fails to meet the requirements of Section 271 as they relate to the Resale checklist item.

5. Inaccurate Billing of Resellers

Essen Communications commented that Qwest has been unable to bill resellers accurately. Specifically, Essen complains that the Customer Service Record (CSR) that it obtains from Qwest when a customer is converted deletes all the prices for the features.[503] Because a Qwest employee in a similar situation would have all the prices, Essen argues that it should have access to these prices as well since they are public information. Essen catalogs numerous similar examples for inaccurate billing, including being billed for the wrong federal access charge and for charges that should be billed to other CLECs.[504]

With respect to the CSR argument, Qwest responded that its prices are available to Essen via IMA and in Qwest's tariffs. Regarding the billing errors, Qwest notes that it has taken numerous

[503] Comments of Essen Communications, 8/25/00, (hereafter Essen) at page 3.

[504] Essen at page 5.

steps to address Essen's concerns, including attending a Commission facilitated meeting with Essen and improving its billing processes.[505]

Proposed Issue Resolution: The effectiveness of Qwest's responses to these billing concerns will be addressed in the ROC OSS test. This issue will be held open for consideration after test completion.

5. Ordering and Other OSS Issues

This criticism was raised in the Essen Comments. No specific examples of substandard order processing were given. Essen also criticized the speed, order entry duplication, and reliability of Qwest's IMA system for order entry.[506] Qwest did not respond to this comment.

Proposed Issue Resolution: The lack of specificity surrounding this issue makes it difficult to identify the precise issue to be resolved. If it remains in issue after the completion of the ROC OSS test, the participants can address it at that time.

6. Other Pricing Issues

Essen asserted that the 18.1% discount received from Qwest is too small, and it will take a reseller 5 months to make a profit due to other expenses. Qwest responded that the Commission in an arbitration proceeding concerning another CLEC's interconnection/resale agreement determined the wholesale discount.[507] Essen also said that the customer transfer charge (or CTC) is the fee resellers must pay to Qwest for the transfer of a local telephone service account. Essen comments that this fee is much higher in Montana than in the other Qwest states, and cited some examples:

Residence First Line

Montana:	$12.64
Arizona:	5.00
Colorado:	3.76
Iowa	2.80[508]

Qwest responded that the customer transfer charges are contained in Essen's resale agreement, which was negotiated between Essen and Qwest and approved by the Commission.[509]

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[505] Simpson Rebuttal at pages 39-40.

[506] Essen at page 13.

[507] Simpson Rebuttal at 39.

[508] Essen at 4-5.

[509] Simpson Rebuttal at 39.

Proposed Issue Resolution: The record here does not allow for any meaningful assessment of the propriety of the discount or of the costs underlying nonrecurring charges. Such issues should be considered in proceedings that have access to the cost information and analyses that underlie prices for such nonrecurring items.

7. Qwest Centrex Contracts

Centrex is a discounted program that is available to businesses with three or more phone lines both Qwest and resellers can provide the service. Essen said that Qwest has two significant advantages in reselling Centrex. First, Centrex is typically sold on a long-term contract, because the customer pays significantly lower prices, as compared to month-to-month service. Essen argued that Qwest has 'locked up' the majority of existing Centrex 21 customers in 37 to 60 month contracts, and also has exclusive knowledge of who are the most profitable customers. Second, the Qwest contract for Centrex services in now location-specific, and cannot be transferred from business to business. Therefore, if a customer defaults at that location, a reseller would be responsible for paying Qwest for the remainder of a long-term contract.

Qwest responded that it is not unfair for it to enter long-term agreements with end users since the end users are free to enter into agreements with the provider of their choice. Once they choose a provider, that provider should be able to enforce the terms and conditions of the agreement.

With respect to the second argument, Qwest notes that the practice of enforcing long-term agreements (and requiring termination charges) against the reseller is nondiscriminatory as the same thing would happen to a Qwest retail end user under the same circumstances.[510]

Proposed Issue Resolution: The record will not support a conclusion that Qwest has used long term contracts to impede competition. The granting of price concessions in return for long-term contracts is an acceptable means of assuring the recovery of investments made to support the needs of a particular customer. Essen's comments in fact corroborate the prevalence in the case of long-term contracts for Centrex services.

There is no inherent reason why the enforcement of termination provisions should be deemed suspect, because they provide a means for recapture of the costs that would otherwise have been paid over a longer term. Essen's argument that Qwest only loses income in the event of an early customer while a reseller actually pays costs is not convincing. Qwest loses the income to recover costs it has incurred; the reseller has not incurred the costs already; thus, in the event of an early termination, the party that advanced the costs to provide the service (i.e., Qwest) gets the same recovery of costs through the application of early termination provisions. In the absence of evidence that Qwest applies them in a discriminatory manner, there is no basis for questioning them here.

[510] Simpson Rebuttal at page 38.

8. Merger-Related PIC Changes

Essen commented that "Qwest dramatically slows down reseller's day to day work by subjecting them to mistakes, problems and provisioning errors that are very time consuming to fix."[511] The prime example of this concern was the requirement that resellers move all of their accounts from one PIC code to another during the Qwest/US West merger. Essen had to "basically shut down for 8 days" and during that time "had to turn down all new orders and all new customer inquiries".[512]

Qwest responded that it was unable to find a technical way to complete the PIC changes for the CLECs and eventually asked the CLECs to change the end users PICs. Qwest notes that Essen was paid for its time and work in processing these service requests.[513]

Proposed Issue Resolution: The PIC changes occasioned by the merger appear to have caused a substantial problem for Essen. However, given the unique circumstances, which are unlikely to recur, and Qwest's compensation for the direct effort undertaken by Essen to respond, this case does not present evidence suggesting that Qwest fails to meet the requirements of this checklist item. Moreover, as noted above, any issues associated with Qwest's OSS can be raised at the completion of ROC testing.

9. Breach of Confidentiality Agreements

Essen provided two examples of this breach: first, when Essen's reseller bill was sent to one of its customers (two occurrences)[514] and second, when Essen received the reseller bill for another reseller.[515] Qwest responded that it has been working on improving its billing processes and stated "Qwest has provided additional training and bill format changes to assure that bills will be sent to the correct party only.[516]

Proposed Issue Resolution: The billing problems cited by Essen ran largely from the late fall of 1999 through January of 2000. The comments, which Essen filed on August 25, 2000 do not indicate whether the problems have persisted. Qwest did cite training programs and bill format changes undertaken since that time. The lack of evidence that such problems have continued after the Qwest changes support a conclusion that Qwest has responded to the need for corrections.

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[511] Essen at page 14.

[512] Essen at page 12.

[513] Simpson Rebuttal at page 41.

[514] Essen at pages 5 and 7.

[515] Essen at page 8.

[516] Simpson Rebuttal at page 40.

10. Superior Service to Qwest's Internal Sales Force

It appears that this complaint is based on Essen's concern that Qwest is able to offer limited time specials to retail customers without offering them to its wholesale customers at a discount, creating an unfair financial advantage.[517] Qwest replied that retail promotional offerings of 90 days or less duration are available for resale and that a wholesale discount does not apply, consistent with the FCC's First Report and Order.[518]

Proposed Issue Resolution: There is no evidence that Qwest has failed to abide by the requirements applicable to promotions.

[517] Essen at page 11.

[518] Simpson Rebuttal at page 40.